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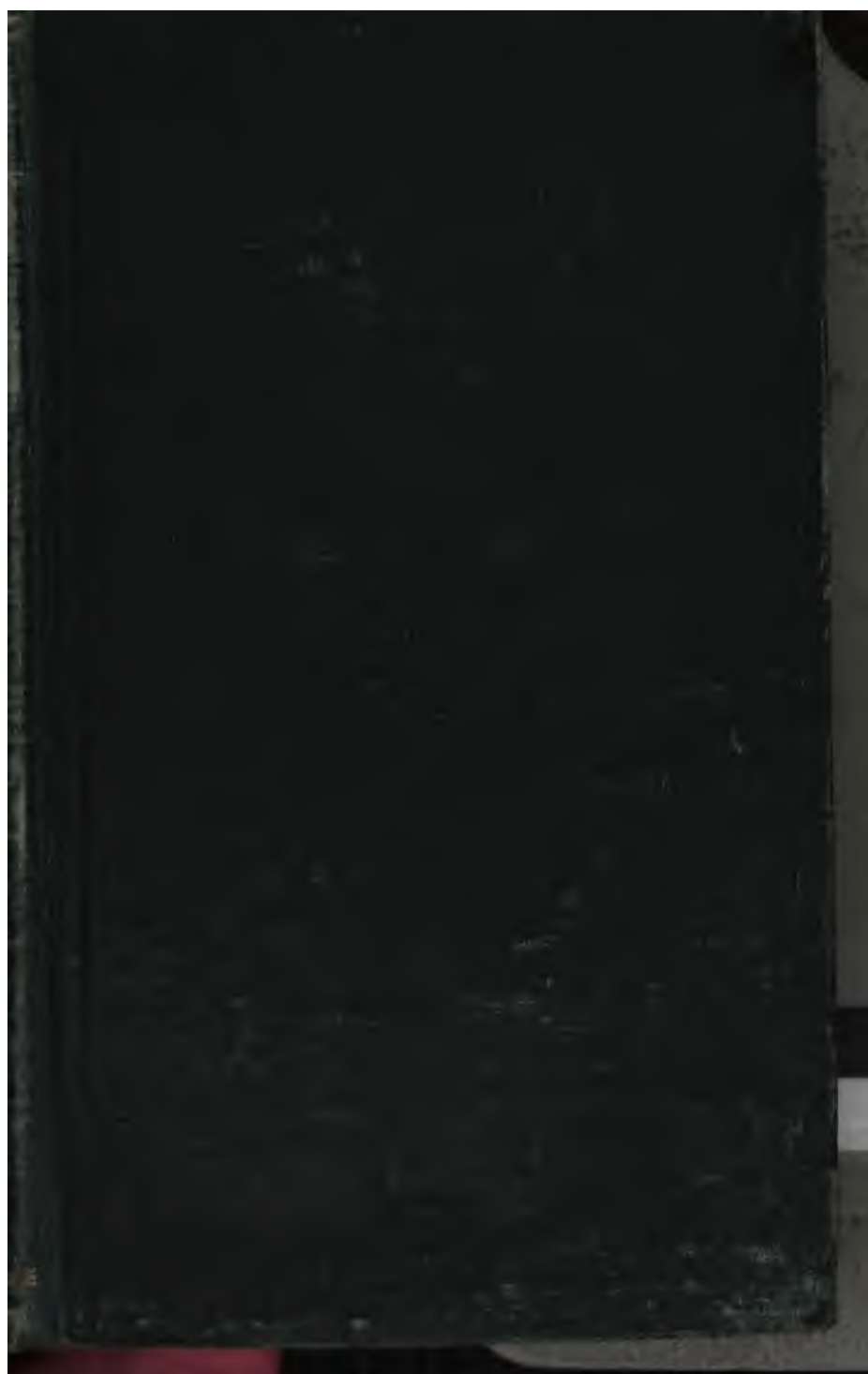
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**SUGGESTIONS**  
**FOR THE**  
**COLLECTION AND ARRANGEMENT**  
**OF**  
**LOCAL INFORMATION**  
**ON THE**  
**VARIOUS SUBJECTS OF PAROCHIAL INTEREST.**

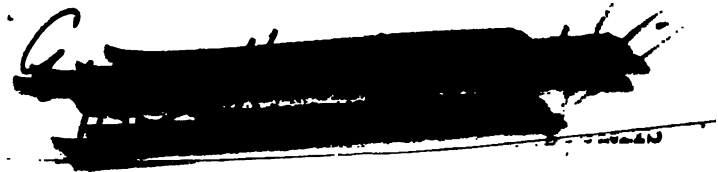
**BY**  
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Somerset House, London, &c.*

The object of this Pamphlet is to indicate, under various heads, the matters of local or parochial interest with respect to which

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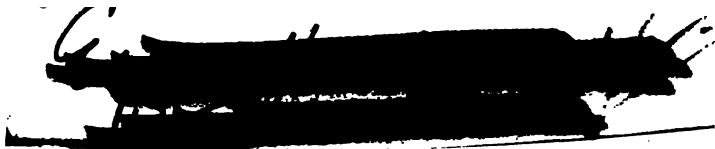
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# MARRIAGE LAW OF ENGLAND:

A PRACTICAL GUIDE TO THE LEGAL REQUIREMENTS  
CONNECTED WITH

THE PRELIMINARY FORMALITIES,  
SOLEMNIZATION, AND REGISTRATION

OF THE

## MATRIMONIAL CONTRACT.

WITH AN APPENDIX OF STATUTES, ETC.

BY

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## PREFACE.

It is natural that an inquiry into the Marriage Laws of the United Kingdom, extending over three years, and conducted by a Royal Commission composed of eminent statesmen and lawyers, should be frequently referred to in the following pages. Since the Commissioners made their Report in 1868, an important modification of the Law of Marriage has taken place in Ireland, and certain mixed marriages in that country will no longer be null and void. But the question of

marriage law reform in England and Scotland will probably be deferred for a considerable time, although strongly advocated by the present Lord Chancellor (Lord Selborne), before his accession to that high office, and also by Lord Chelmsford, the Chairman of the Commission. Nor is it probable that the recommendations of the Commissioners will at any time, as a whole, meet with general approval. They propose, for instance, to establish a system of cheap licences, to be granted in privacy by ministers of religion as a substitute for banns, without the safeguard which protects at present the certificate of the civil authority, namely, that the officer who grants the certificate should in all cases be a different person from the minister or officer who is to celebrate the marriage. Again, the Commissioners would impose on dissenting ministers the obligation of registering the marriages solemnized in their places of worship, a duty which would be opposed alike to the feelings and principles of many ministers, who would consider themselves placed in the position of servants and stipendiaries of the State (a).

The wisdom of *one* of the recommendations of the Commissioners will, however, be generally acknowledged, namely, that no marriage otherwise lawful which has been actually solemnized in the presence of an authorized minister of religion or civil officer should be annulled on the ground that any of the preliminary requirements have not been duly observed; in other words, that all

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(a) See Appendix, No. V., *post*.

these preliminaries should be regarded as directory, to be enforced by penalties, and none of them as essential to the validity of marriage. If a minor is married in the church of a parish where neither party has ever resided, without consent of parent or guardian, and upon a licence obtained by means of an affidavit in all respects false, the marriage is good. But on the ground of a want of due publication of banns—and banns are of little value except in reference to prerequisites not treated as essential—a marriage may be declared void. To give an example: a young man named Bower Wood, a minor, published his banns, with his intended wife's consent, in the name of *John Wood*; he having expectations from his uncle, Mr. Bower, whom he did not wish to offend. On application to the Divorce Court the marriage was annulled on the ground of undue publication of banns. In the days when divorce was costly, and consequently not much sought after, this state of the law might not have been of much moment; but at the present time women may easily become the victims of their foolish weakness in consenting to the banns being published in a false name.

Each division of the United Kingdom has its own Marriage Law. It is the system in force in England to which this book refers; but desirous that it should include all that a person interested in the subject might wish to refer to, the author has given an account of the Marriage Laws in Ireland, Scotland, India, and the British Colonies. The law applicable to the marriages of British subjects in foreign countries is also included.



Although the general principles of the Law of Marriage are plain and simple, the details of the subject are often imperfectly understood. The author's experience, derived from his official position, has, he trusts, guarded him from omitting any points of practical importance likely to arise in the operation of the Statutes.

In some respects the plan of the late Mr. Shelford's comprehensive Treatise on the Law of Marriage and Divorce, published more than thirty years ago, has been followed in the present work ; but as it is intended chiefly for non-legal persons, the author has avoided technicalities as much as possible, and has cited cases only where necessary to illustrate the text. He is not without hope, however, that the compilation will be favourably received not only by those for whose use it is more especially designed, namely, Clergymen, Superintendent Registrars, and others officially connected with the execution of the Marriage Acts, but also by Lawyers and the general public.

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# THE MARRIAGE LAW OF ENGLAND.

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## CHAPTER I.

### OF THE MARRIAGE CONTRACT, AND ITS LEGAL HISTORY IN THIS COUNTRY.

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#### SECT. 1.—NATURE OF THE MARRIAGE CONTRACT.

EMINENT lawyers and divines have explained the nature, origin, and characteristic features of the marriage contract ; but opinions have been much divided as to whether it should be regarded as a merely civil engagement or as a religious and spiritual union. That it is the most important and solemn engagement into which one individual can enter with another, whether considered in relation to the rights and obligations of the parties, or to the moral and material interests of

society, is universally acknowledged ; and it may be defined as a contract entered into, according to the forms prescribed by law, between a man and a woman competent to form such a contract, by which they mutually and spontaneously agree to live together in a state of conjugal union until death shall separate them. The peculiar character of this union is marked by the word "conjugal;" and although it originates in the internal consent of the parties, and external agreement expressed by words, it is entirely independent of their will. It differs from all other contracts in this, that the rights and duties of the parties are not left to be regulated by their own agreement, but are matters of municipal regulation, over which they have no control. Matrimony gives rise to the relation of consanguinity and affinity ; it confers the status of legitimacy on children born in wedlock, with the rights and duties thence arising ; in short, it is the foundation of the whole system of civilized society.

From its consequences as regards property and the rights of husbands and wives, children, &c., matrimony may be correctly designated a civil contract ; but as an institution deriving its origin from God, and not from any human legislation, it must also be deemed a divine or religious contract, even when solemnized according to civil forms. To use the words of Lord Stowell, "it is not *merely* either a civil or a religious contract, and is not to be considered as originally and simply one or the other" (a).

As the constitution of marriage consists in the bond by which the husband and wife are united by words expressing mutual consent and agreement, the maxim of the civil law, "*Consensus, non concubitus, facit*

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(a) *Lindo v. Belisario*, 1 Hagg. C. R. 260.

*matrimonium*," has lost none of its original force; and the various formalities and modes of celebrating marriage required by the laws of different states are not inconsistent with the principle that consent is the efficient cause of marriage, since the forms of celebration are only so many modes of indicating the consent of the parties in such a manner as to preclude all pretence of the want of a deliberate purpose.

SECT. 2.—THE ENGLISH MARRIAGE LAW PRIOR TO LORD  
HARDWICKE'S ACT (1753).

The canon law, engrafted upon the rules of the civil law, is the basis of the law of marriage throughout Europe. At an early period in the history of the Christian Church the doctrine was established that "matrimony is a holy thing in which the secular power hath no authority," and it became a dogma of faith that marriage was a sacrament. It was natural, therefore, under the religious system which prevailed in Europe during the middle ages, that the regulation of matrimony should fall under ecclesiastical jurisdiction. Hence the law of the Church, or canon law, furnished the rules with respect both to the celebration and legal constitution of marriage.

The ceremony called espousals (*sponsalia*), which preceded a marriage under the civil law of the Romans, was refined upon by the canonists, who distinguished espousals of two kinds: (1.) *Sponsalia per verba de presenti*, and (2.) *Sponsalia per verba de futuro*; the first being simply an agreement to marry immediately, and the second an agreement to marry at a future time, which, however, under certain circumstances, became equivalent to espousals *de presenti*. A matrimonial



contract between two competent parties was constituted by words expressing present mutual acceptance; neither party could recede from it; and a subsequent regular marriage by either with another person during the lifetime of the parties to the first contract was voidable.

But with regard to the celebration of matrimony, the canonists held that it ought to be solemnized *in facie ecclesie*, although that expression does not imply that the marriage must necessarily take place in a church; they allowed that the contract was complete without the intervention of a priest, but the priest's co-operation was commanded by the Church for the sake of greater decency and order. The aid or presence of a person in holy orders was however not indispensable, because the sacrament of matrimony might be mutually administered to each other by the contracting parties; at the same time, irregular or clandestine marriages, although discountenanced alike by the temporal and the spiritual authority, and destitute of many legal effects, were as binding and effectual as those solemnized in a church.

As the result of these views there were three distinct modes of entering into matrimony under the ancient law of England: (1.) By public celebration *in facie ecclesie*; (2.) By clandestine celebration covertly conducted by a clergyman ecclesiastically ordained; and (3.) By the mere consent of the parties.

In the year 1563 the famous Council of Trent passed its decree for the reformation of marriage, declaring that no marriage should be valid unless celebrated duly *in facie ecclesie*, and in the presence of the parish priest and two witnesses. That decree, however, had authority only in those countries which acknowledged the Papal supremacy; it had conse-

quently no reception in England, being dated nearly thirty years subsequent to the breach between Henry VIII. and the Pope. The law of marriage in England, therefore, continued on its former footing.

A clandestine or irregular marriage would not confer upon the woman the right of a widow in respect of dower, nor upon the man the right of a husband in respect of the woman's property, nor render the children legitimate ; nevertheless, it was indissoluble, and either party might in the spiritual court compel the other to solemnize the marriage *in facie ecclesie* (a).

Until the severance of the Anglican from the Romish Church all appeals from the ecclesiastical courts in England were sent to the See of Rome. The restrictions upon marriage consequent upon the extension of the prohibited degrees rendered necessary constant applications to the Holy See ; for the Pope, by his dispensation, could make almost any marriage valid on the ground of urgent necessity or evident utility (b). But appeals to the See of Rome were forbidden in 1532, by stat. 24 Hen. 8, c. 12 ; and amongst other opinions disclaimed at the Reformation, was the doctrine of a sacrament in marriage, although the ecclesiastical courts continued to follow those rules of the canon law which had their foundation, not in any mere religious view of the subject, but in the natural or divine origin of the contract. An irregular marriage was still held to be valid to the full extent of voiding a subsequent regular marriage with another party ; and

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(a) Macqueen's *Husband and Wife*, part I., 5.

(b) Dispensations were sometimes sought as a means of gaining the favour and recognition of the all-powerful Church, as in the case of Henry VII. and Elizabeth of York, of whom no common ancestor could be traced for 150 years, and during half that period the deadly feud between the houses of York and Lancaster had existed.

the decisions of the spiritual courts on points relating to the validity of marriages were received as conclusive by the temporal courts, which, however, firmly maintained their own jurisdiction in dealing with matters connected with the civil consequences of matrimony.

The statute of 1532 having decided that all spiritual causes should henceforth be decided within the realm, in the following year an Act was passed (25 Hen. 8, c. 19) for the appointment of a commission to review the ecclesiastical laws in general, and until such review was made (which never happened) it was enacted that the canons, constitutions, &c., already made should be used and executed as they were before the passing of the Act (a). This statute was repealed by 1 & 2 Phil. & Mar. c. 8, but revived by stat. 1 Eliz. c. 1, which is still in force; and the authority of the canon law in England now depends upon the stat. 25 Hen. 8, c. 19 (b).

It is necessary to particularize the provisions of the various Acts affecting marriages which King Henry VIII., impelled by his private passions, obtained from a servile parliament (c).

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(a) The like authority to appoint a commission to review the ecclesiastical laws was given to the King by stat. 3 & 4 Edw. 6, c. 11, and the commissioners appointed, with Cranmer at their head, digested a work entitled *Reformatio Legum Ecclesiasticarum*; but this work, in consequence of the King's death, never received a legal sanction.

(b) See 1 Black. Com. 83.

(c) The question whether marriages within certain degrees of affinity were permitted by the law of God was the subject of much discussion when the King sought to be relieved from his marriage with Queen Katharine.

The stat. 25 Hen. 8, c. 22, is the first in which mention is made of the prohibited degrees, its real object being to repair the defect in the marriage of Henry with Anne Boleyn. A marriage with a brother's wife or a wife's sister was declared to be void. This Act was repealed by 28 Hen. 8, c. 7; the King had then married Jane Seymour, and the issue of both his preceding marriages were declared illegitimate.

The *Statute of Precontracts* (32 Hen. 8, c. 38) is still in force. It recites the mischief which had ensued from the Bishop of Rome "making that unlawful which by God's word is lawful both in marriages and other things," and enacts that every marriage contracted between lawful persons and solemnized in the face of the Church shall be deemed lawful and indissoluble, "and that no reservation or prohibition, God's laws except, shall trouble or impeach any marriage without the Levitical degrees" (d).

On the accession of Queen Mary, Papal supremacy was re-established; matrimony again became a sacrament; and the whole of the statutes which abridged the power of the Roman See, or vested spiritual power in the Crown, were repealed. But the first Act passed in the reign of Queen Elizabeth "To restore to the Crown the ancient jurisdiction over the Estate Ecclesiastical" repealed the Act asserting the Pope's supremacy, and revived many of the statutes which had been repealed.

By the Act of Uniformity (1 Eliz. c. 2) a particular Liturgy was established, to be used throughout the kingdom; and in 1562 the Thirty-nine Articles of the Church of England took their present form. By the 25th Article marriage is expressly declared *not* to be a sacrament; but regarding it as a "holy state," the Church enjoins banns, consent of parents, and a ritual celebration.

In the first year of King James I. (1603) the convocation for the province of Canterbury made several canons concerning the government of the Church, the clergy, marriage, &c., which had the royal assent. These canons, not having been confirmed by parlia-

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(d) This Act was repealed by 1 & 2 Phil. & Mar. c. 8, but was revived by 1 Eliz. c. 1.

ment, do not, by their own force and authority, bind the laity; but they contain some provisions declaratory of the ancient usage and law of the Church of England which will bind the laity, the obligation being antecedent to and not arising out of this body of canons. The clergy however are clearly bound by them, except in so far as non-observance has rendered them obsolete.

Several of these canons of 1603 are directed to the regulation of matters connected with the celebration of marriage (*a*). The 62nd canon declares that no minister, upon pain of suspension *per triennium*, shall solemnize matrimony without banns or licence, and consent of parents in the case of minors; and all marriages are to take place between the hours of 8 and 12 in the forenoon in the parish church of the parties and not in any private place. The 99th canon, from which the Table of prohibited degrees in the Book of Common Prayer derives its authority, declares that "no person shall marry within the degrees prohibited by the laws of God, and expressed in a Table set forth by authority in the year of our Lord 1563" (namely, Archbishop Parker's Table of Degrees, which appears to have been published by his own authority only); and that all marriages so made shall be adjudged incestuous and unlawful and be dissolved as void from the beginning. It further requires that the aforesaid Table shall be in every church publicly set up and fixed at the charge of the parish. Canon 100 prohibits minors from marrying without consent of parents or guardians. Canon 102 requires security to be taken at the granting of licences against the existence of any impediment of precontract or kindred, &c.; and canon 103 requires *the oaths* of two

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(*a*) See Appendix, No. II.

sufficient witnesses that the express consent of parents has been obtained, and the oath of one of the parties that there is no impediment of precontract, &c., before a licence can be granted. Although by these canons the publication of banns or a licence was enjoined and the express consent of parents in the case of minors required, a marriage *by a clergyman* was nevertheless valid without banns or licence, and the want of consent was only a prevenient impediment not affecting the validity of the marriage, if performed.

During the Commonwealth an ordinance of the parliament allowed marriages to be solemnized before a justice of the peace; a form of contracting words was prescribed, and marriages celebrated according to this secular form were to have the same legal effect as those solemnized in church. On the Restoration a statute was passed to remove doubts concerning these marriages and to give them full legal force and effect.

In the Liturgy now in use the "Office of Matrimony," as established by the Act of Uniformity, 13 & 14 Car. 2, c. 4, is nearly the same as in the Prayer Book of Queen Elizabeth, and the rubric has all the force of statute law.

Notwithstanding the stringency of the ecclesiastical law on the subject of marriage, irregularities continued to exist, in part traceable to the old doctrine that a want of completeness in the manner of solemnization did not render the contract less binding. A shameless traffic in clandestine marriages commenced towards the close of the 17th century, and was continued in defiance of the law and heavy pecuniary penalties, to the great scandal of the Church, until put an end to by Lord Hardwicke's Act (26 Geo. 2, c. 33).

The ministers of some of the churches and chapels

exempted from the visitation of the ordinary were the first to lend themselves to irregularities; they were willing to marry parties without either licence or banns, and their churches were largely resorted to for purposes of clandestinity.

To check these practices it was enacted in 1695 (6 & 7 Will. 3, c. 6), that every clergyman marrying without licence or banns, or in an unauthorized place, should forfeit 100*l.* for the first offence, and for the second be suspended for three years. This was evaded by the clergyman procuring substitutes who could not easily be discovered and convicted. Another enactment (*a*) rendered any clergyman who celebrated, or *permitted* in his church, any marriage without the requisite formalities, liable to forfeit 100*l.*, the man married 10*l.*, and the parish clerk or sexton 5*l.* Even this proved ineffectual, for the profits of the ministers officiating at marriages in places out of the jurisdiction of ecclesiastical authority were sufficiently large to enable them to risk the penalty (*b*).

One effect of the measures taken for the prevention of secret matrimony in churches, was to extend this scandalous trade in another direction. A class of profligate and degraded clergymen confined in the Fleet Prison, or residing within its rules, undertook to marry couples in a private manner, and these men touted for clandestine marriages with unblushing effrontery. At

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(*a*) 7 & 8 Will. 3, c. 35. The main object sought by this statute was to prevent the revenue from being defrauded of the tax upon parchment licences.

(*b*) The churches of St. James, Duke's Place, near Aldgate, and Trinity, Minories, were greatly resorted to for these clandestine marriages. Mr. Burn states that as many as 30 to 40 marriages per day were sometimes performed in these churches, and that one register alone belonging to St. James, Duke's Place, from 1664 to 1691, contains nearly 40,000 entries.—*Burn's History of Parish Registers.*

first the marriages were often performed in the Fleet chapel; but the stat. 10 Anne, c. 19, having put an end to the celebration there, certain taverns and public-houses, in which were rooms specially fitted up for the performance of the ceremony, came to be known as regular marriage houses. Here the "Fleet parsons" derived a handsome livelihood, and being already incarcerated for debt or delinquencies, they had nothing to lose in purse or character, and had no dread of episcopal correction or public reprobation. After the service, which was of course that of the Church of England, the parson usually made a note of the marriage in a pocket-book, the entry being subsequently transcribed into a larger and more regular register. In some cases the entry was made in the pages of the register at once. A certificate of the marriage was usually sold to the parties, the forms being headed with an imposing engraving of the royal arms.

Another famous hymeneal temple was the chapel in which the notorious Keith officiated, in May Fair (c). Clandestine espousals were also contracted in the King's Bench Prison, the Mint, Southwark, and through the instrumentality of the hedge parsons, as they were termed, in other parts of the kingdom (d).

The registers of the Fleet and May Fair marriages were purchased by government in 1821, and were deposited in the registry of the Bishop of London until the appointment, in 1887, of commissioners to

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(c) In this chapel James, fourth Duke of Hamilton, was married in 1752, to Miss Gunning, "with the ring of a bed curtain, half an hour after 12 at night."—*Walpole to Mann*, Feb. 27, 1752. In an advertisement, Keith describes the position of his chapel. See *Cunningham's Handbook of London*.

(d) See *An Account of the Fleet Registers*, by J. S. Burn; and an article in the *Cornhill Mag.* for May, 1867, by Mr. E. Whitaker, one of H. M. Inspectors of Registration.



inquire into the state of non-parochial registers. These extraordinary records were then handed over to the commissioners, by whom it was decided that they were not entitled to be placed on the same footing as other registers of which they had expressed their approval; and in consequence of their recommendation, it was enacted, by 3 & 4 Vict. c. 92, that the Fleet and May Fair registers should be received into the custody of the registrar general, but should not be made receivable in evidence by virtue of that Act. Accordingly, these registers, comprised in about 1200 books of various sizes, are preserved at the office of the registrar general at Somerset House, where they are open to search upon the payment of a small fee.

SECT. 3.—THE ENGLISH MARRIAGE LAW SUBSEQUENTLY  
TO LORD HARDWICKE'S ACT.

It is not surprising that the scandals of the Fleet and May Fair marriages should have led to attempts to remedy, by fresh legislation, the evils of clandestinity. Several Bills with this object were brought into parliament, but the attempts failed when it was proposed to annul marriages for want of due solemnization, because it was contended that human laws should not put asunder those whom God had joined together.

At length, after the most strenuous opposition, both in and out of parliament, the Marriage Act of 1753, entitled "An Act for the better preventing of Clandestine Marriages" (26 Geo. 2, c. 33), prepared by Lord Chancellor Hardwicke, passed into law. This statute, pronounced by Blackstone to be "an innovation upon our ancient laws and constitution," swept

away the whole subject of irregular and clandestine marriages in England, by establishing the necessity of resorting to a public and regular form, without which the relation of husband and wife could not be contracted. It enacted that all marriages, after the 25th March, 1754, should be solemnized in the parish church or public chapel (in which banns were usually published) of one of the parties, and that all marriages celebrated without publication of banns, or licence duly granted, should be absolutely null and void. A special licence from the Archbishop of Canterbury could alone evade the obligation to celebrate matrimony in the parish church or chapel of one of the parties. The Act further declared, after reciting that "many persons do solemnize matrimony in prisons and other places without publication of banns or licence," that every person so offending should, upon conviction, be adjudged guilty of felony, and be transported for fourteen years. It also enacted that in no case whatever should any proceeding be had in any ecclesiastical court to compel a celebration of any marriage *in facie ecclesie*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti* or *per verba de futuro* entered into after 25th March, 1754. From this date verbal contracts of matrimony ceased to have any binding effect in England; solemnization could not be enforced, and damages for breach of promise, recoverable by action, afforded the only relief in such cases.

Other formalities were prescribed by the statute. Every marriage was to be solemnized in the presence of two or more witnesses, besides the officiating minister, and registered in a proper register book, the entry to be signed by the parties, the minister, and the witnesses. In the case of banns, the consent of

parents or guardians to the marriage of minors was not required to be specified or proved; nor were clergymen to be subject to punishment by law or by ecclesiastical censure for marrying minors without consent unless notice of *dissent* had been given. The marriage of a minor after banns, where dissent had not been expressed, was lawful (a). But in the case of a marriage by *licence*, where either of the parties (not being a widow or widower) was a minor, without the consent of the parent or guardian of the minor, the marriage was to be absolutely null and void,—a most objectionable enactment, which was productive, in many instances, of the greatest hardship and injustice (b).

But Lord Hardwicke's Act was not less objectionable from its arbitrary violation of conscience in compelling Roman Catholics and dissenters, having their own religious ceremonies, to go into a church and to celebrate their marriages according to the rites of the Church of England in order to ensure their validity. By the Toleration Act of 1 William and Mary, dissenters had been formally recognised, and had been exempted from the pains and penalties attached to nonconformity; their marriages according to their own forms and usages were thenceforth treated as marriages *de facto*. But the new Act gave the Church the sole authority to

(a) This is still the law of banns.

(b) A man was enabled to marry a woman solemnly in the face of the Church, to live with and acknowledge her publicly as his wife, and have issue by her,—and 25 years afterwards to bring a suit for annulling the marriage, on the ground that he himself had falsely and fraudulently sworn, in order to obtain the licence, that she was 21 years of age, when she was in fact two months younger. "That was in the case of *Hewitt v. Bratcher* (1809), in which I was counsel before the High Court of Delegates; and that court decided that agreeably to the Act of 1753, then in force, a marriage must, under such circumstances, be annulled."—Sir J. Stoddart's *Letter to Lord Brougham on the Irish Marriage Cases*, 1844.

celebrate legal marriages in England, which it continued to enjoy until the year 1837.

This celebrated statute, however, was not without its merits. It destroyed the infamous trade of the Fleet Prison and May Fair parsons; it enforced a regular public celebration after compliance with certain preliminary forms; it abolished precontracts and marriages *per verba de presenti*; and it established the principle that no minor should marry without consent of parent or guardian as evidenced by oath in the case of a licence, and by the absence of any expression of *dissent* in the case of banns.

In order to alleviate the hardship resulting from the harsh provision in Lord Hardwicke's Act, which nullified the marriages by licence of minors without consent, and sometimes upon the most frivolous pretexts, a Bill was brought into parliament by Dr. Phillimore, and carried in 1822, which repealed the objectionable section of the Act of 1753 as to any marriage thereafter to be solemnized, and rendered valid past marriages where the parties had lived together until the death of one of them, or until the passing of the Act (c).

We come now to the Marriage Act, 4 Geo. 4, c. 76 (1828), by which marriages after banns, or by licence, according to the rites of the Church of England are at present regulated (d). By this statute so much of

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(c) Stat. 3 Geo. 4, c. 75. This statute also contained (sect. 8 and subsequent sections) new and more stringent regulations to prevent clandestine marriages by licence; but having been once solemnized, marriages were not to be impeached merely on the ground of informality as to consent, &c. In the next session was passed the stat. 4 Geo. 4, c. 17, repealing the 8th section, and all the subsequent provisions of 3 Geo. 4, c. 75, and enacting that licences should be granted in the case of minors, with the same consent and in the same manner as required by Lord Hardwicke's Act.

(d) See Appendix, No. I.

Lord Hardwicke's Act as remained in force was repealed (*a*); and the penalty of nullity was confined to the case of persons wilfully consenting to the celebration of marriage without due publication of banns, or without a licence from a person having authority to grant the same, or by any person not in holy orders, or elsewhere than in a church or chapel wherein banns might be lawfully published. The want of consent by parents or guardians in the case of minors did not, under this Act, invalidate the marriage; but it provided that in the event of any fraud practised to procure the contract, the guilty party should forfeit all property accruing from the marriage.

This statute of 4 Geo. 4, although an improvement upon the Hardwicke Act, was still open to the serious objection that it left the power of celebrating marriages as it had stood before, exclusively in the hands of the church, a restriction which gave offence to Roman Catholics and almost every denomination of dissenters.

Nevertheless, this state of things continued until an important change was made in the marriage law of England by the operation, in 1837, of the Act of 6 & 7 Will. 4, c. 85. This measure was introduced, together with a Bill to provide for the registration of births, deaths, and marriages, by Lord John Russell (now Earl Russell), then Secretary of State for the Home Department. Its chief object was to relieve persons not in community with the Church of England from the necessity of resorting to churches to have their marriages performed by ministers whose religion they

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(*a*) As also was the Act of the same session, 4 Geo. 4, c. 17, except so far as these Acts repealed any former Act, and save as to any matters or things done under their provisions. The first seven sections of the 3 Geo. 4, c. 75, having been left unrepealed, are still in force.

did not follow, and to whose doctrines they did not assent. Roman Catholics and dissenters were enabled to have their marriages celebrated according to their own rites in their own places of worship, when registered for the purpose, on condition that a registrar of marriages should be present at the ceremony. The Act further enabled persons who desired to dispense with the intervention of religious authority, or who considered the civil form of marriage a fitting addition to religious rites (as where the parties professed different creeds), to contract matrimony at the district register office before the superintendent registrar and a registrar of marriages. Thus adequate relief was afforded to the conscientious scruples of Roman Catholics, nonconformists, and others, while an advantage was offered to the Church of England in being relieved of those who had been compelled to resort to churches for the sole purpose of rendering their marriages legal (*b*).

Notwithstanding the relief afforded by this statute, for some years after its operation much less resort was had to it, except by the Roman Catholics, than might have been anticipated. Protestant dissenters continued to celebrate their marriages for the most part in churches;—to possess the liberty of marrying in their own chapels appeared to satisfy them without largely exercising it. Within the last few years, however, the number of nonconformists who have availed

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(*b*) It was stated in the discussion on the Bill that Roman Catholics were compelled to celebrate their marriages twice if they wished them to be legal, and that among the poorer classes who had come to this country from Ireland, a very strong prejudice existed against entering a Protestant church; in consequence of this feeling the children of many of them were illegitimate, and the wife having no legal claim on her husband, was frequently deserted by him. See speech of Mr. O'Connell, *Hansard*, Sess. 1836.

themselves of the rights conceded by the Act of 1836 appears to have increased. In the year 1870, the last for which the returns are made up, out of a total of 181,655 marriages in England and Wales, 43,669 were celebrated not according to the rites of the Established Church. Of these, 7,891 were solemnized in Roman Catholic chapels, and 18,024 in places of worship of various nonconformist denominations; 17,848 were marriages in register offices according to the civil form. There were, besides, 358 marriages between Jews, and 48 according to the usages of the Quakers (*a*).

Some of the requirements of the Act of 1836 having been deemed objectionable, particularly the enactment that every *notice of marriage* should be read before the board of guardians of the poor, a remedy was provided by the Act of 19 & 20 Vict. c. 119. By this statute notices of marriage are required to be "suspended" in the district register offices, and not read before the guardians. In the case of a marriage by licence, the length of notice is reduced from seven days to one clear day after the entry of the notice, and facilities are afforded for the marriage of dissenters in their usual places of worship (*b*).

In a sketch of the history of the matrimonial contract in England, it would be improper to omit a notice of the important change in the law of divorce effected by the Act 20 & 21 Vict. c. 85, passed in 1857. Under the ecclesiastical law, as it remained after the Reformation, marriage was regarded as indissoluble, and the only redress for conjugal transgression was divorce

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(*a*) Registrar General's 33rd Annual Report. In the first four years after the operation of 6 & 7 Will. 4, c. 85, the average number of couples married under its provisions did not exceed 6800 annually. See statistics of marriages in England, in Appendix, No. IV.

(*b*) For the text of this statute, see Appendix, No. I.

*à mensâ et thoro*, the effect of which was not to dissolve the marriage bond but simply to authorize the separation of the parties whose legal rights continued in most respects as they were before. Where an antecedent incapacity existed, which rendered the contract in reality void from the beginning, the ecclesiastical courts could declare nullity of marriage; but for any supervenient cause which had arisen subsequently to lawful marriage, the doctrine of indissolubility operated as a bar to total divorce. In consequence, a practice grew up of appealing to the legislature for divorce *à vinculo*, when the parties aggrieved could afford the expense. But parliamentary divorce was a remedy for the rich only, and the special Acts were seldom obtained.

With a view to redress this evil, a Royal Commission was issued, in 1850, to inquire into the law of divorce, and especially into the mode of obtaining divorces *à vinculo matrimonii*. The commissioners made a report in 1853 (c), and recommended that dissolution of marriage should no longer be granted by the legislature, but by a court specially constituted, and that divorce *à vinculo* should be allowed to a husband for his wife's adultery, but not to a wife for his adultery, except in cases of aggravated enormity. In the session of 1854, the Lord Chancellor presented to the upper house a Bill founded on the commissioners' report, but differing materially from it. This Bill, which proposed to transfer the jurisdiction in matrimonial causes to the Court of Chancery, was read a second time, but proceeded no further. Another government Bill

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(c) The Report was signed by Lord Campbell, Dr. Lushington, Lord Beaumont, Mr. Walpole, Sir W. Page Wood, and Mr. Bouverie, Lord Redesdale dissenting, and giving his reasons for considering marriage indissoluble.



was introduced in the session of 1856 ; it was referred to a select committee, and having passed the House of Lords was read a first time in the Commons, and then abandoned. At length, in the new parliament of 1857, another government Divorce Bill was presented, and although much altered in its progress through the legislature it became law, having been " maturely considered, laboriously discussed, and not hastily carried through " (a). By this important measure (b) the jurisdiction of the ecclesiastical courts in matters matrimonial, except as to marriage licences, was transferred to a newly-constituted court, and power given to the new tribunal to decree dissolution of marriage upon the petition of the husband on the ground of his wife's adultery, or upon the petition of the wife on the ground of her husband's adultery coupled with cruelty, or of adultery coupled with desertion, without reasonable cause, for two years or upwards, or of bigamy, or of incestuous adultery, &c. The term "judicial separation" is substituted for that of divorce *à mensâ et thoro* ; consequently the word "divorce" now imports in all cases a dissolution of marriage and not a mere separation. The effects of divorce as to re-marrying will be noticed in a subsequent chapter (c).

An account of the marriage laws in force in Ireland and Scotland will be found in a subsequent part of this work (d). As regards the legal capacity of persons to contract marriage, the law is (with certain exceptions arising out of Scottish sentences of divorce) the same throughout the United Kingdom ; but in other

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(a) Macqueen's Law of Divorce, p. 35.

(b) 21 & 22 Vict. c. 85, amended by 22 & 23 Vict. c. 61, and 31 & 32 Vict. c. 77.

(c) See Chapter II., *post*.

(d) See Chapter VIII., *post*.

respects, while the principles and provisions of the English and Irish law, as chiefly contained in a series of modern Acts of parliament, generally agree, they differ most materially from the law in Scotland, where the legal constitution of marriage does not depend upon the observance of any solemnities or forms prescribed by statute, but upon the ancient canon law as it existed before the Council of Trent.

SECT. 4.—ROYAL COMMISSION ON THE MARRIAGE LAWS.

The discordant principles and practice of the marriage laws in the several parts of the United Kingdom having been brought under public notice in a remarkable manner by the celebrated "Yelverton Case," a Royal Commission was issued in March, 1865, to inquire into the laws of marriage in operation in the United Kingdom, India, the Colonies, and, as regards British subjects, in foreign countries (*e*). At the end of three years the commissioners presented a report, in which they gave a concise account of the state of the marriage laws of the United Kingdom, and pointed out the grave inconveniences resulting from different systems of constituting the most important of social relations being in force in England, Ireland, and Scotland.

If it were possible to reduce these laws to one uniform system, the commissioners thought such an

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(*e*) Lord Chelmsford was the chairman of the commissioners, amongst whom were Lord Lyveden, Mr. Walpole, Mr. Monsell (now Postmaster-General), Mr. Inglis (now Lord Justice General of Scotland), Mr. Justice O'Hagan (now Lord Chancellor of Ireland), Sir J. P. Wilde (now Lord Penzance), Sir W. P. Wood (now Lord Hatherley), Lord Cairns, Sir Roundell Palmer (now Lord Chancellor), and other eminent lawyers.

object in the highest degree desirable ; and they set forth what they deemed to be the principles of a sound marriage law which ought to embrace the maximum of simplicity with the maximum of certainty. They were of opinion that every proper and reasonable facility should be given for celebrating marriage, but that the State ought to discourage and place obstacles in the way of sudden and clandestine marriages, and also to enable parents and guardians to protect minors from improvident and unsuitable connections. The commissioners further thought " that the State should be absolutely impartial and indifferent as between the members of different religious denominations, and should found its legislation as to marriage upon the necessity and duty of regulating its civil conditions and effects."

The last principle enunciated is " that it is both the wisdom and the duty of the State to associate its legislation on this subject with the religious habits and sentiments of the people, and to obtain as far as possible the religious sanction for the marriage contract" (a).

Having settled what they held to be the principles of a sound marriage law, the commissioners proceeded to apply them in a series of recommendations. They recommended—(1) That the contract or declaration of consent necessary to constitute legal matrimony should take place in all parts of the United Kingdom in the presence of an authorized minister of religion or an authorized civil officer ; (2) That notices of intention to marry be given by the parties to a minister of religion or civil officer by or before whom the marriage is to be celebrated ; (3) That requirement of solemniza-

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(a) Report of Commissioners on Laws of Marriage, 1868, p. xxv.

tion within any certain hours or at any particular church or other place should no longer be indispensable; and (4) That forms of solemnization ought not to be taken notice of by the State, provided words of mutual consent to be husband and wife were solemnly interchanged between the parties in the presence of an authorized celebrant or civil officer. Various other regulations were proposed, more particularly as to the requirements preliminary to marriage; but as the recommendations of the commissioners seem unlikely at present to be the basis of legislation for any part of the United Kingdom, it is unnecessary to enter into further details. The Lord Justice General of Scotland dissented from so much of the report as involved a proposal to abrogate the principal of the marriage law of Scotland—that present consent to be husband and wife interchanged between a man and woman competent to contract, makes marriage between them without a religious ceremony or a compliance with any statutory forms or solemnities.

Since the issue of the report of the Marriage Laws Commissioners, Lord Chelmsford, in the House of Lords, and Sir Roundell Palmer (now Lord Chancellor), in the Commons, have urged the introduction by the government of a measure of marriage law reform; but the only result has been a vague promise that the whole subject will be considered when more pressing matters are disposed of.

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## CHAPTER II.

### OF THE CAPACITY OF PERSONS TO MARRY, AND THE IMPEDIMENTS TO MARRIAGE.

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#### SECT. 1.—LEGAL CAPACITY OF PERSONS TO CONTRACT MARRIAGE.

In general, all persons are, of natural as well as legal right, able to contract matrimony unless they labour under some particular disabilities or incapacities, such as being under the bond of a prior subsisting marriage, the want of sufficient age, relationship to the other party within the prohibited degrees of consanguinity or affinity, insanity, and certain corporal infirmities. Formerly, although the canonical disabilities of consanguinity and affinity rendered the marriages voidable, they were esteemed valid for all civil purposes unless

sentence of nullity was declared during the lifetime of the parties; but since the passing of 5 & 6 Will. 4, c. 54 (Lord Lyndhurst's Act) all subsequent marriages between persons within the prohibited degrees are, *ipso facto*, void, and not merely voidable. The civil disabilities, as they are termed, such as want of age, prior subsisting marriage, insanity, and the like, make the contract void *ab initio*, on the ground of the incompetency of the parties to contract. If any persons under these legal incapacities come together, it is a meretricious and not a matrimonial union, and therefore no sentence of avoidance is necessary (a). The voidable marriages that remain are those where the requisites of the Marriage Acts have not been complied with, or where one of the parties was proved from some physical infirmity (*e. g.*, deaf and dumb) not to have understood the contract professed to have been entered into by him or her.

In order to contract a good and valid marriage the parties must not only be willing to contract, but they must be legally capable of contracting, and they must actually have contracted according to the forms and solemnities required by law (b). It is of great importance, therefore, that every person who may be called upon to perform any duty or office connected with the celebration of marriages should be informed as to the legal impediments to the matrimonial union,—in other words, who may intermarry and who may not.

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(a) *Elliott v. Gurr*, 2 Phill. 19.

(b) 1 Bla. Com. 434. By the Act 5 & 6 Edw. 6, c. 12, the clergy, as to matrimony, are put upon the same footing with all other persons: this is further expressed by the 32nd of the Articles of Religion.

SECT. 2.—IMPEDIMENTS TO MARRIAGE—A FORMER  
EXISTING MARRIAGE.

A chief impediment to contracting lawful marriage is the having a husband or wife of a prior legal marriage alive and undivorced. In such circumstances the ceremony of a second marriage during the life of the former husband or wife, is a mere nullity, and of no effect whatever as a contract of matrimony, even although it may be entered into in good faith, and in ignorance of the existence of any impediment. A simple precontract to one person is no longer an impediment to a legal marriage with another.

*Bigamy.*] A second marriage whilst the former (undivorced) husband or wife is known to be living constitutes the offence called bigamy (*a*); but a person marrying a second time is not punishable for bigamy if the husband or wife has been continually absent for *seven years* then last past, and has not been known by such person to have been alive within that time (*b*), for the presumption of the continuance of life ceases at the expiration of seven years from the period when the person so absent was last heard of.

The offence of bigamy was originally of ecclesiastical cognizance; it was made a felony temp. James I. (*c*).

(*a*) "Bigamy shall be taken to mean marriage of any person being married to any other person during the life of the former husband or wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere." 20 & 21 Vict. c. 85, s. 27.

(*b*) 9 Geo. 4, c. 31, s. 22.

(*c*) By 1 Jac. 1, c. 11, repealed by 4 Geo. 4, c. 31, s. 1, and re-enacted by 4 Geo. 4, c. 31, s. 22.

The existing penal enactment on the subject is 9 Geo. 4, c. 81, which enacts that if any person being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or elsewhere, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof shall be liable to be transported for the term of seven years, or to be imprisoned, with or without hard labour, for any term not exceeding two years; and every such offence may be dealt with, tried, and punished in the county where the offender shall be apprehended or be in custody, as if the offence had actually been committed in that county (*d*). Then follows the important proviso, that nothing therein contained shall extend (1) to any second marriage contracted out of England by any other than a subject of His Majesty; or (2) to *any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time*; or (3) to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any

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(*d*) Upon indictments for bigamy irregularities in the preliminary forms for the second marriage, such as the relationship of the parties within the prohibited degrees, or publication of banns in fictitious names, have been held to be no answer to the charge, although the first marriage under such circumstances might thereby have been rendered void. A former marriage must be proved, and the identity of the parties established by some person who was present thereat. It is not requisite, however, to prove a compliance with all the requisites of the Marriage Acts. After proof of the first marriage the second (so-called) wife may be a witness, and may prove the second marriage after production of the register or a certified copy of it; but the first and true wife cannot give evidence against her husband to establish the first marriage.



person whose former marriage shall have been declared void by the sentence of a court of competent jurisdiction (a).

With respect to a person whose husband or wife has been continuously absent for the last seven years, and the fact of whose existence has been unknown to such person during that time, the presumption is that the former consort is no longer living, and that such person is a widower or a widow. As the law allows a person under these circumstances to marry again with impunity, a clergyman would be justified in putting up the banns and celebrating a second marriage, and a superintendent registrar in granting his certificate or licence for the same, unless there should be reason to doubt the truth of the statement as to the continuous absence of the husband or wife for seven years without having been heard of or known to be alive during that time. There is always a presumption in law in favour of innocence, unless the accompanying circumstances in the particular case are such as to rebut that presumption; a proper amount of caution is therefore all that is necessary, when there is no reason to doubt the good faith of the parties, without interposing unduly any obstacle to the celebration of the second marriage. In such cases, when the banns are published, or a notice of marriage is given to a superintendent registrar, and subsequently, when the marriage is registered, the party whose husband or wife is presumed to be dead should be described as a *widow* or *widower*, as the case may be. At the same time it should always be remembered that a second marriage, while the husband or wife of the first marriage is living

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(a) The Irish statute against bigamy, 10 Geo. 4, c. 34, is in the same terms, except that persons aiding or abetting are not included.

is void, and in the event of the return of the absent spouse the ceremony is a mere nullity.

*Effect of divorce as to re-marriage.*] With respect to the exemption from the liability to a prosecution for bigamy on the ground of divorce, it will be observed that the divorce must be from "the bond of the first marriage." Therefore, after a mere judicial separation, neither party can marry again without committing the offence of bigamy, nor after a decree *nisi* (b). There must have been a *decree absolute* of dissolution of marriage, or the former marriage must have been declared null and void by a court of competent jurisdiction, before the parties are free to marry again, unless indeed the first marriage shall have been *ipso facto* null and void.

In cases where a divorce is alleged to have been obtained *out of England*, great circumspection should be used by clergymen and superintendent registrars before taking any proceedings in furtherance of a re-marriage of the person said to be divorced. It has been clearly established, that where the first marriage was in England a divorce in any other country, founded on grounds upon which a marriage cannot be dissolved in England, or where the parties are not at the time actually and *bonâ fide* domiciled in the country from the court of which the decree emanates, cannot be recognised in the English courts. In *Lolley's*

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(b) Where the husband obtained a decree *nisi* for dissolution of marriage, and a fortnight after re-married, the court being satisfied that in contracting the second marriage, he honestly believed that the first had been dissolved by the decree *nisi*, and that he had no intention of committing adultery, exercised the discretion vested in it under the 31st section of the Divorce Act, and ultimately made the decree absolute: *Noble v. Noble and Godman*, 20 L. T. (N. S.) 1016; 38 L. J. P. & M. 52.

*Case*, the defendant having been married in England, subsequently went to Scotland, and there procured a divorce; he then returned to England, and having married a second time, his first wife being alive, he was in consequence tried for bigamy. His defence was, that he had been legally divorced in Scotland; but on appeal the twelve judges were unanimously of opinion, that no sentence or act of any other country or state could dissolve an English marriage *à vinculo matrimonii*, on grounds for which it was not liable to be so dissolved in England; and further, that unless the divorce was that of a court within the limits to which the statute of 1 Jac. 1, c. 11, extended (namely, England and Wales), it was no defence to the charge of bigamy (a). Therefore, when the parties are really not domiciled in Scotland, but only go there for the purpose of getting a divorce, the decree of the Scotch courts cannot dissolve the bond of marriage celebrated in England (b).

Where the parties were married in England, but divorced in Denmark, the Lord Chancellor decreed in favour of the marriage, observing that the English marriage could not be annulled by the Danish law (c). So, also, where a marriage celebrated in England between English subjects was subsequently dissolved by an American court, on grounds of divorce similar to those admitted by the law of this country, and it appeared that the parties, though resident, had not obtained a domicile in America, the court refused to

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(a) *Rex v. Lolley*, Russ. & Ry. C. C. 237.

(b) *Conway v. Beazley*, 3 Hagg. 639; *Tollemache v. Tollemache*, S. & T. 561; *Robins and Paxton v. Dolphin*, 3 Macq. H. L. Cases, 563.

(c) *McCarthy v. De Caiz*, cited in *Conway v. Beazley*, 3 Hagg. 642.

recognise the divorce, and held the marriage to be still valid (*d*).

It follows, therefore, that a divorce decreed by an English court is necessary in order to dissolve a marriage between English persons legally solemnized in England, so as to leave the parties free to marry again without committing bigamy.

With respect to divorces in England, it is important to bear in mind—(1.) That until a marriage is legally and fully dissolved by the decree *absolute* of the Court of Divorce, the parties to the suit are not free to marry again; and (2.) That after the decree absolute is pronounced, neither of the parties can legally contract a fresh marriage, except in undefended cases, until the expiration of the time limited for appealing against the decree. By a decree *nisi* the parties are not placed in a position to be married afresh; and any person marrying between the passing of the decree *nisi* for a divorce, and the decree being made absolute, is liable to be prosecuted for bigamy, because the previous marriage is not dissolved.

By the "Divorce Act, 1857," it was provided (sect. 56), that an appeal from the full court on any petition for the dissolution of marriage lay to the House of Lords if parliament were then sitting, but if not then sitting, within fourteen days next after its meeting. This is repealed by the "Divorce Amendment Act, 1868" (31 & 32 Vict. c. 77), which provides (sect. 2), that either party dissatisfied with the final decision of the court on any petition for dissolution or

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(*d*) *Shaw v. Attorney General*, 18 W. R. 1145. Lord Penzance in this case remarked :—1. That *Lolley's Case* had never been overruled; 2. That in no case has a foreign divorce been held to invalidate an English marriage between English subjects where the parties were not domiciled in the country by whose tribunals the divorce was granted.

nullity of marriage may, *within one month after the pronouncing thereof*, appeal therefrom to the House of Lords, and on the hearing of any such appeal the House of Lords may either dismiss the appeal or reverse the decree, or remit the case to be dealt with in all respects as the House of Lords shall direct. Then follows this important proviso: "Provided always, that in suits for dissolution of marriage no respondent or co-respondent not appearing and defending the suit on the occasion of the decree *nisi* being made, shall have any right of appeal to the House of Lords against the decree when made absolute, unless the court, upon application made at the time of pronouncing the decree absolute, shall see fit to permit an appeal."

The Divorce Amendment Act, 1868, further provides (sect. 4) that sect. 57 of the Divorce Act, 1857, "shall be read and construed with reference to the time for appealing as varied by this Act; and in cases where under this Act there shall be no right of appeal, the parties respectively shall be at liberty to marry again at any time after the pronouncing of the decree absolute."

Thus, by sect. 2 of the Divorce Amendment Act, 1868, the provision in the Act of 1857 as to appealing to the House of Lords *when sitting*, is repealed; and it is said that no appeals to the House of Lords can be lodged except when parliament is sitting (a). So that supposing a decree absolute to be pronounced after the prorogation of parliament in August, a dissatisfied party could not, under ordinary circumstances, appeal until February, even if not barred by the limitation of one month; whilst a decree pronounced at any

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(a) Information of Mr. H. R. Edwards, chief clerk in the Divorce Registry.

time during the sitting of the House of Lords, could be appealed against immediately, and if no appeal be presented within one month after the pronouncing of the decree absolute, the parties are at liberty to marry again. But the question arises whether when parliament is not sitting, and consequently no appeal to the House of Lords can be presented, parties seeking to be remarried are at liberty to do so, without waiting beyond the month after the decree absolute. From the terms of the statutes it would appear that to wait one month is sufficient whether parliament be sitting or not. At present there has been no judicial decision on this point.

Under the system of parliamentary divorce which was put an end to by the Divorce Act of 1857, the complainant, whether the husband or the wife, had liberty, by an express clause in the Bill, to marry again. The delinquent husband or wife had no such permission given in terms, but on the ground that the marriage had been dissolved, did not hesitate to re-marry. Liberty to divorced persons to marry again is given by the Act of 1857, which provides (sect. 57), that when the time limited for appealing against any decree dissolving a marriage has expired, and no appeal has been presented; or when any such appeal has been dismissed; or when in the result of any appeal any marriage has been declared to be dissolved; then, *but not sooner*, it shall be lawful for the *respective* parties to marry again as if the prior marriage had been dissolved by death. The statute therefore allows divorced persons to enter into fresh nuptials as soon as the marriage has been conclusively rescinded; and they may select whom they please, the intermarriage of adulterers not being prohibited. Indeed, a divorced wife may marry again so soon

as that a child may be born within such a time as to admit of its having been the child of either husband (a).

*The clergy not compellable to marry certain divorced persons.]* No clergyman in holy orders of the Church of England is compelled to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person (b). This is a saving of the reasonable scruples of clergymen ; but in case of such refusal, the Act (by sect. 58) imposes on them an obligation as to the use of their churches in such cases ; it provides that when any minister of any church or chapel of the Established Church shall refuse to perform such marriage service between any persons, who, but for such refusal would be entitled to have the service performed therein, such minister is to permit any other minister in holy orders of the Church of England entitled to officiate within the diocese to perform such service. Divorced persons seeking fresh nuptials are found to prefer resorting to the civil form of marriage at the district register office.

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(a) A widow may do the same, and in such an event Blackstone says that the child, when arrived at years of discretion, may choose which of the mother's husbands he pleases as his father. The civil law forbade any woman to re-marry until the expiration of a year, the *annus luctus* ; and the same decent regulation was probably handed down to our early ancestors by the Romans, as it was well established in this island under the Saxon and Danish governments. 1 Comm. 456. Under the Code Napoléon, in the case of divorce for adultery, the guilty spouse was not permitted to marry the accomplice ; the divorced wife was also interdicted from re-marrying until ten months after the sentence of divorce.

(b) Divorce Act, 1857, sect. 57.

*As to whether divorced women should use their married or maiden surname.*] It appears to be a matter of doubt whether a wife after divorce should retain the name of her divorced husband, or whether she ought to resume her maiden or other former surname. When a sentence of *nullity* of marriage has been pronounced, it is clear that the so-called wife ought to resume her maiden or other surname, for there has in fact been no marriage, and the children, if any, are *ipso facto* illegitimate. In cases of dissolution of marriage, however, where there are children, and especially if some of them are committed to the care of the mother, it seems clear that she should not cease to use her husband's name. But where there are no children, the resumption of her maiden name is supported by precedent, and would seem to be unobjectionable, the marriage having been annihilated, and the connection at an end (c).

The registrar general's instructions to his officers prescribe the following as the proper mode of describing a divorced man or woman who may give notice of intended marriage :—

THE MAN.

Names and Surname.	Condition.
(Ex. gr.) James Robinson	- The divorced husband of Mary Robinson, formerly Smith, (spinster or widow, as the case may be).

THE WOMAN.

Ann Jones	- - - - - The divorced wife of Thomas Jones.
formerly Brown (spinster or widow, as the case may be).	

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(c) Macqueen's *Law of Divorce*, 2nd ed., p. 112.



SECT. 3.—IMPEDIMENTS ARISING FROM RELATIONSHIP  
WITHIN THE PROHIBITED DEGREES.

Relationship within the prohibited degrees of consanguinity or affinity is an effectual impediment to lawful matrimony; and as questions regarding the legal capacity of persons related or connected by family ties to contract marriage frequently arise, this branch of our subject demands especial attention.

Consanguinity, or relationship by blood, is of two kinds:—(1.) *Lineal*, as between children, parents, grandparents, and so on, directly ascending; or between children, grandchildren, and so on, directly descending; (2.) *Collateral*, as when two persons descend indirectly from the same ancestors, as brothers and sisters, uncles and nieces, aunts and nephews.

Affinity, which arises out of marriage, the husband and wife being considered one flesh, is of three kinds:—(1.) *Direct*, or that which subsists between the husband and the wife's blood relations, or between the wife and the husband's blood relations; (2.) *Secondary*, or that which subsists between the husband and the wife's relations by marriage (as between the husband and his wife's brother's wife, &c.); (3.) *Collateral*, or that which subsists between the husband and the relations of his wife's relations. But the affinity which bars marriage is only that of the first or *direct* kind; moreover, the *kindred of the husband* are not of affinity to the *kindred of the wife*; for affinity, as respects the kindred of the wife, relates only to the husband and terminates in him, and as respects the husband's kindred, it in like manner relates only to the wife.

From the earliest ages of the Christian Church

marriages between persons related within certain degrees of kindred or affinity were prohibited as contrary to the law of God, the law of nature, or the law of the Church. Those "near of kin" (a), within the Levitical degrees were forbidden to intermarry alike by the common law of England and by the ancient canon law. By the latter a great variety of degrees of relationship were made impediments to matrimony, although the prohibition might be removed on dispensation granted by authority of the Pope. Thus the marriage of cousins was invalid without a dispensation; and even in cases of very remote relationship it was deemed a prudent precaution, when the means of the parties enabled them to do so, to apply for the dispensing power of the Holy See, by which, "for a great gain of peace and love," the prohibition was without difficulty removed.

The first mention of the prohibited degrees in the statute book is in the Act of 25 Hen. 8, c. 7, which contains a clause declaratory of the Levitical degrees (b). Other statutes of this reign passed by a pliant parliament in obedience to the imperious will of the king have exercised an important bearing on this subject. The 32 Hen. 8, c. 38, gives the rule by which it is to be ascertained whether parties may, by reason of affinity, be lawfully married or not; for it enacts that "all persons be lawful to marry [*i. e.*, may lawfully marry] that be not prohibited by God's law, and no reservation or prohibition, God's law except (c),

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(a) See Levit. xviii.; xx. 19; xxi. 2, 3; xxv. 49.

(b) Repealed by 28 Hen. 8, c. 7, which however re-enacted, with some slight modifications, so much of the former statute as related to marriages within the prohibited degrees. This statute is said to be repealed.

(c) The words "God's law except," are held to include cases of natural impotency, polygamy, and adultery; for if the Act

shall trouble or impeach any marriage without the Levitical degrees." This statute renders marriages unimpeachable for consanguinity or affinity without the Levitical degrees (a).

The ecclesiastical courts dealt with marriages within the prohibited degrees of affinity at first by pronouncing them null and void, notwithstanding one or both of the parties might be dead when the suit was sought to be commenced. But in the time of James I. the courts of common law interfered and prohibited the spiritual courts from proceeding to pronounce them null and void after the death of one of the parties. Hence, all these marriages came to be called voidable marriages, and if sentences of nullity were not pronounced by the competent ecclesiastical tribunals, during the lives of both parties, their validity could not be afterwards questioned, nor the legitimacy of the children be impeached. This state of the law continued until the year 1835, when, by the statute 5 & 6 Will. 4, c. 54 (commonly called Lord Lyndhurst's Act), marriages within the prohibited degrees of affinity, celebrated *before* the passing of the Act, were rendered incapable of being annulled by any sentence of the ecclesiastical court; and all such marriages celebrated after the passing of the Act were declared by it to be absolutely null and void (b). The Act does not alter the law as to the degrees them-

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had been general that no marriage without the Levitical degrees should be impeached, it might have included cases of that description: Shelford, *Law of Marriage*, 166.

(a) The 32 Hen. 8, c. 38, was repealed in part (viz., so far as relates to the not annulling marriages for cause of precontract) by the 2 & 3 Ed. 6, c. 23, and was wholly repealed by 1 & 2 W. & M. c. 8, s. 19; but by the 1 Eliz. c. 1, so much of it is revived as was not repealed by the 2 & 3 Ed. 6, c. 23.

(b) See the statute, App. No. I. The Act extends to Ireland; consequently, the law on this subject is the same in that country as in England. By the law of Scotland the distinction between

selves, or define the degrees ; but adopts the prohibited degrees as then known and recognised by the law of England.

In 1847 a Royal Commission was appointed to inquire into the state and operation of the law of marriage as relating to the prohibited degrees of affinity, and to marriages solemnized abroad or in the British colonies. The Bishop of Lichfield (Dr. Lonsdale), Dr. Lushington, Mr. Justice Vaughan Williams were, with others, members of the commission. In their report the commissioners state that of marriages within the prohibited degrees by far the most frequent class was that of marriage of a widower with the sister of his deceased wife, so that in fact it formed the most important consideration in the whole subject; and that as these so-called marriages will take place, especially among the middle and poorer classes, when a concurrence of circumstances gives rise to mutual attachment, the commissioners were of opinion that the statute 5 & 6 Will. 4, c. 54, had failed to attain its object, " but whether any or what measure should be introduced for a change of the law either on the side of relaxation or stricter prohibition, they must leave to the wisdom of the legislature" (c). The report of the Royal Commission was followed by much public controversy and by frequent ineffectual attempts at legislation ; indeed, session after session a Bill to legalize marriage with a deceased wife's sister has passed the House of Commons, but has been rejected by the House of Lords.

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void and voidable marriages is not recognised : all marriages within the prohibited degrees are void, *ab initio*.

(c) First report of Comm., p. xii. The commissioners state that marriage with the sister of the deceased wife is permitted, by dispensation or otherwise, in nearly all the continental states of Europe, and in most of the States of the American

*Table of the prohibited degrees.*] A question having arisen upon an indictment of one Chadwick for bigamy as to what were the prohibited degrees intended by the statute of 5 & 6 Will. 4, c. 54, the Court of Queen's Bench were unanimously of opinion that the degrees intended were those mentioned in the Table annexed to the Book of Common Prayer (a). This Table, which is known under the title of Archbishop Parker's Table of Degrees, is said to be framed not merely according to the letter but according to the spirit of the Levitical law; and it has been invested by the canon law, as well as subsequently by the decisions of the highest judicial tribunals, with full force and authority in England. The 99th of the canons of 1603 refers to this Table, and declares that "No persons shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority in the year 1568; and all marriages so made and contracted shall be adjudged incestuous and unlawful, and consequently shall be dissolved as void from the beginning, and the parties so married shall by course of law be separated."

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Union such second marriages are deemed lawful and praiseworthy.

(a) In *Chadwick's Case* the defendant, after the decease of his wife, married his wife's sister, and a few months after that second marriage he turned her out of doors and married another woman. He was indicted for bigamy upon the third marriage and on writ of error his acquittal was confirmed by Court of Queen's Bench, Mich. Term, 1847.

A TABLE  
OF  
KINDRED AND AFFINITY,

WHEREIN WHOSOEVER ARE RELATED ARE FORBIDDEN IN  
SCRIPTURE AND OUR LAWS TO MARRY TOGETHER (b).

*A Man may not marry his—*

1. Grandmother.
  2. Grandfather's wife.
  3. Wife's grandmother.
  4. Father's sister
  5. Mother's sister
  6. Father's brother's wife
  7. Mother's brother's wife
  8. Wife's father's sister
  9. Wife's mother's sister
  10. Mother.
  11. Stepmother.
  12. Wife's mother (*mother-in-law*).
  13. Daughter.
  14. Wife's daughter (*step-daughter*) (c).
  15. Son's wife (*daughter-in-law*).
  16. Sister.
  17. Wife's sister
  18. Brother's wife
  19. Son's daughter
  20. Daughter's daughter
- } (*i. e., aunt by blood*).  
 } (*uncle's wife, i. e., aunt by affinity*).  
 } (*wife's aunt*).  
 } (*sister-in-law*).  
 } (*granddaughter*).

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(b) Dr. Burn remarks on this table:—"This table, which is according to several previous statutes, was set forth in the year 1563. The degrees specified in the said statutes are particularly set forth in the 18th chapter of Leviticus, whereby not only degrees of kindred and consanguinity, but degrees of affinity and alliance, do hinder matrimony."—*Eccl. L.*

(c) The marriage of a widower with the daughter of his deceased wife by a former husband is prohibited: *Blackmore v. Brider*, 2 Phill. 359.

21. Son's son's wife (*son's daughter-in-law*).
22. Daughter's son's wife (*daughter's daughter-in-law*).
23. Wife's son's daughter (*step-son's daughter*).
24. Wife's daughter's daughter (*step-daughter's dau.*)
25. Brother's daughter } (*niece*).
26. Sister's daughter }
27. Brother's son's wife } (*nephew's wife*).
28. Sister's son's wife }
29. Wife's brother's daughter } (*wife's niece*).
30. Wife's sister's daughter }

*A Woman may not marry with her—*

1. Grandfather.
2. Grandmother's husband.
3. Husband's grandfather.
4. Father's brother } (*uncle by blood*).
5. Mother's brother }
6. Father's sister's husband } (*uncle by affinity*).
7. Mother's sister's husband }
8. Husband's father's brother } (*husband's uncle*).
9. Husband's mother's brother }
10. Father.
11. Stepfather.
12. Husband's father (*father-in-law*).
13. Son.
14. Husband's son (*step-son*).
15. Daughter's husband (*son-in-law*).
16. Brother.
17. Husband's brother } (*brother-in-law*).
18. Sister's husband }
19. Son's son } (*grandson*).
20. Daughter's son }
21. Son's daughter's husband (*son's son-in-law*).
22. Daughter's daughter's husband { (*daughter's son-in-law*).

- 23. Husband's son's son (*step-son's son*).
- 24. Husband's daughter's son (*step-daughter's son*).
- 25. Brother's son } (*nephew*).
- 26. Sister's son }
- 27. Brother's daughter's husband } (*niece's hus-*
- 28. Sister's daughter's husband } (*band*).
- 29. Husband's brother's son } (*husband's nephew*).
- 30. Husband's sister's son }

With reference to these prohibitions it is important to bear in mind—

1. That the degrees prohibited extend to *all persons* related in lineal consanguinity, that is, in the ascending or descending line.
2. That relationship of the *half-blood* is of the same effect as relationship of the whole blood.
3. That as consanguinity and affinity are contracted "as well by unlawful company of man and woman as by lawful marriage," it matters not whether the parties are related or connected through lawful wedlock or otherwise,—they are equally restricted from intermarriage within the prohibited degrees.
4. The *kindred of the husband* are not of affinity to the *kindred of the wife*; and therefore the husband's brother may marry his brother's wife's sister, that is, two brothers may marry two sisters; so also the husband's son by a former marriage may marry his father's second wife's daughter by a former husband; that is, a father and his son may marry a mother and her daughter (*a*).

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(*a*) Wood, Civ. L. 119. A son by a first marriage may marry his father's second wife's sister; and a widower, although he may not marry his brother's widow, may marry the widow of his former wife's brother. The wife's brother is by affinity brother to the husband, but the affinity does not extend to his wife.



5. Consanguinity bars marriage to the third degree inclusive collaterally, according to the mode of computation adopted by the civil law, which is the basis of the rule in England. But marriages of relations in the fourth degree (as first cousins), and any subsequent degree, are lawful by the statute of 32 Hen. 8 (a).

*Marriage with a deceased wife's sister.*] A marriage between a widower and the sister of his deceased wife is unlawful, as being within the prohibited degrees, and is consequently, since 31st August, 1835, by the Act 5 & 6 Will. 4, c. 54, rendered absolutely null and void, and not merely voidable (b). Much ignorance prevails with regard to the legal effect of these unions, which, indeed, are held by many excellent persons to be perfectly unobjectionable on religious and social grounds. It is clearly the duty of clergymen, superintendent registrars, and others who may be brought into communi-

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(a) By the computation according to the civil or Roman law, every person generated makes a degree, without reckoning the common stock; thus, father and son are related in the first degree, brothers in the second degree, uncle and nephew in the third degree, first cousins (or cousins german) in the fourth degree, second cousins in the sixth degree. The canon law extends its prohibitions to the seventh degree; the mode of computing is the same as the civil law, in the direct or right line of ascendants or descendants; but in the collateral the canonists compute by the number of generations distant from the common stock. According to this reckoning, first cousins are in the second degree, because each of them is but two generations distant from the grandfather. The canon law prohibits the intermarriage of first cousins and of second cousins, except on dispensation.

(b) *R. v. Chadwick*, 17 L. J. (Q. B.) 81. Such marriages prior to Lord Lyndhurst's Act, and the rights of parties claiming under and through them, stand as they stood before, unless the law has been altered by the decision of the House of Lords in *Fenton v. Livingstone*, Macqueen's Law of Divorce, 332.

cation with parties wishing to form such alliances, to explain to them the actual state of the law on the subject, and to point out that a so-called marriage of this nature would be a nullity, and the issue illegitimate.

Moreover, in the case of persons so related, where by concealment of the fact of relationship a "notice" is given to a superintendent registrar to procure a ceremony of marriage, the party giving such notice, and making and subscribing the solemn declaration thereto annexed that "there is no lawful impediment of kindred or alliance" to hinder the marriage, renders himself or herself liable to a prosecution, and, upon conviction, to suffer the penalties of perjury, under stat. 19 & 20 Vict. c. 119, s. 2.

Nor is a marriage between a man and his sister-in-law, the usual domicile of the parties being in England, rendered valid by celebration in a country where such marriages are allowed. In the case of *Brook v. Brook* (c), it was held that the *lex loci contractus* cannot impart validity to a marriage prohibited by the laws of the country of domicile and allegiance of the contracting parties. Therefore, a marriage celebrated during a temporary residence in Denmark between an English widower and the sister of his deceased wife, being within the scope of Lord Lyndhurst's Act, is not valid, although by the Danish law, marriages are permitted between persons so related by affinity (d).

Where a man has married, as it is called, his deceased wife's sister, a decree of nullity from the Divorce Court is not necessary, provided the ceremony

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(c) 3 Smale and Giff. 481; and on appeal, 9 H. L. Cases, 193.

(d) The parties had gone through a ceremony of marriage at Altona, in Denmark, both being British subjects temporarily resident there, but really domiciled in this country: but if, though English born, they had been domiciled in Denmark at the time, the marriage would have been good in England.

took place subsequently to 31st August, 1885, when the 5 & 6 Will. 4, c. 54, nullified all marriages within the prohibited degrees of affinity; and he may have the requisite authority for another marriage. But before enabling him to contract marriage with another woman while the person with whom he had gone through the ceremony of marriage is still living, it would seem proper to require some satisfactory proof that the present so-called wife is, as alleged, the actual sister of the deceased wife, and that the man is free to marry again. The clergyman, surrogate, or superintendent registrar would no doubt act with due circumspection in such a case, not accepting the mere statement of the man, or even his affidavit or solemn declaration, as to the absence of impediment to a fresh marriage without some corroboration.

*Brother's wife.*] The marriage of a widow with her late husband's brother is also prohibited by law as incestuous, she being by affinity his sister (a). In a case where before the 5 & 6 Will. 4, c. 54, such a marriage had been set aside by the Ecclesiastical Court as void *ab initio*, the so-called husband was declared to have acquired no right over the property of the so-called wife (b).

*Wife's niece.*] The marriage of a widower with his deceased wife's niece is prohibited by the law of England as incestuous, for she is by affinity in the same degree as an uncle to his niece by consan-

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(a) See Levit. xx. 21. Marriage with a brother's wife is especially declared to be "an unclean thing," and, according to Lightfoot, it was one of the thirty-six offences held in greatest odium among the Jews. But see Deut. xx. 5, 6, as to childlessness.

(b) *Aughtie v. Aughtie*, 1 Phill. R. 201.

guinity (c). Marriages between uncle and niece are allowed by the customs of the Jews ; but it is understood that the present Chief Rabbi, Dr. Adler, refuses to countenance any proposed union which is contrary to law in this country.

*Cousins.*] By the law of England, first as well as second cousins, and all *collateral* relations in the fourth and subsequent degrees of the civilians may intermarry. The canon law prohibits (without a dispensation) in the fourth degree, which is that of second cousins, according to the computation of the canonists ; while the civil law allows in the fourth degree, which is that of first cousins, according to the civilian mode of reckoning. This is supposed to account for a common misapprehension which has prevailed that first cousins may marry but second cousins may not.

*Illegitimate relations.*] Consanguinity and affinity operate as impediments to marriage with illegitimate relations as much as with legitimate ones. The reason of this is that the rules of prohibition of marriage arise out of natural relations : as they are taken from the law of God, and have one common origin therein, they are all considered of the same moral nature and religious obligation (d). Although an illegitimate person being the first of his family, has no ancestors of whom the law takes notice for *civil* purposes, as rights of inheritance and succession to property, yet he has relations for *moral* purposes, and therefore he cannot

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(c) *Clement v. Beard*, 5 Mood. 448. The marriage of a widower with his deceased wife's mother's sister is prohibited : *Butler v. Gaskell*, Gilb. 156.

(d) Per Lord Stowell, *Horner v. Horner*, 1 Hagg. Cons. R. 353.

marry his own sister or other relations within the prohibited degrees. The disqualifications of illegitimacy being of civil institution only, do not intrinsically weaken the natural ties of kindred. The marriage of a man with the illegitimate daughter of his deceased wife is equally incestuous as in the case of a legitimate child (a).

*Marrying within the prohibited degrees during an existing marriage, bigamy.*] An important judgment on an indictment for bigamy was delivered after an argument before the sixteen judges in a case where one Allen, his second wife being alive, had married a niece of his first wife. A majority of the Irish judges—seven to four, and also the House of Lords, in the celebrated case of *The Queen v. Millis*, and *Creswell, J.*, in the Divorce Court,—had decided in similar cases, that to constitute the offence of bigamy, the second marriage must be valid; while on the other hand, Lord Denman and another of the English judges had held that the offence of bigamy was, under analogous circumstances, committed. Cockburn, C. J., in delivering the judgment of the Court for Crown Cases Reserved, stated that after giving the fullest consideration to the reasoning of the majority of the Irish judges, the court were unable to concur in it, and had arrived unanimously at the opposite conclusion. The conclusion of the majority of the Irish judges was founded upon the argument that as the language of the statute is—“any person who, being married, shall marry another person,” the words “shall marry” in the second clause of the sentence must mean the same as the words “being married” in the first clause; and

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(a) Per Sir J. Nicholl, *Blackmore v. Brider*, 2 Phill. 361.

that as there the words clearly meant a valid and legal marriage, so they must in the other part; and that so, to constitute the offence, the second marriage must—apart from its being bigamous—be as valid as the first. The court, however, differed wholly from that view, and held, that if the form of marriage had been used which the law recognised as binding, whether applicable to the parties or not, the offence was committed. When it became necessary to seek the meaning of the terms of a statute, the true rule of construction was to look to the purpose of the enactment, the mischief to be prevented, and the remedy to be applied. And on this view it could not be considered that the second marriage must be as valid as the first, or that the mischief to be prevented was polygamous marriages. Polygamy—in the sense of a person having two wives or husbands—was foreign to all our ideas, and was practically unknown in this country, whereas bigamy, in the modern acceptation of the term, was unfortunately too frequent. It created a public scandal by applying a form and ceremony which the law only allowed to a real and legal marriage to one which was wholly colourable and fictitious. Such instances as these, involving as they did all the public scandal and the outrage upon public decency and morality were within the mischief which it was the object of the statute to punish and prevent. The words “shall marry another,” might well be taken to mean “shall go through the form and ceremony of marriage with another person.” The words were fully capable of being so construed without being forced or strained, and as a narrower construction would have the effect of leaving a portion of the mischief untouched which it must have been the intention of the legislature to provide against, the court thought they were warranted

in inferring that the words were used in the sense referred to, and that they should best give effect to the legislative intention by holding such a case as the present within their meaning. They held, therefore, that when a person already barred by an existing marriage went through a form of marriage known to and recognised by the law as capable of producing a valid marriage, for the purpose of a pretended and fictitious marriage, the case was not the less within the statutory prohibition by reason of any special circumstances which, independently of the bigamous character of the marriage, might constitute a legal disability in the particular parties, or make the form of marriage resorted to specially inapplicable in their individual case (*a*).

#### SECT. 4.—WANT OF SUFFICIENT AGE.

The age of legal capacity to marry in England is fixed at 14 years in males and 12 in females; and no persons are capable of binding themselves in marriage until they have attained that age, which is termed the age of consent. Our law agrees in this respect with the civil law, which required that the parties should be of the age of puberty, namely, 14 if male, and 12 if female—a period much earlier than that at which marriage can in any case be prudent or desirable. Derived from the south of Europe, it rests upon the principle that marriage ought not to be made impossible by law between those who are capable by nature of being the parents of children (*b*).

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(*a*) *Reg. v. Allen*, Q. B. Easter T. 1872.

(*b*) *Rep. Marr. Laws Comm.*, 1868, p. xxvii. The commis-

Formerly, by the law of England, if a boy under 14 or a girl under 12 married, such marriage was considered only inchoate and imperfect, and when either of them came to the age of consent they might agree or disagree to the marriage; but in the present state of the law, any consent of the parties unattended with the forms required by the Marriage Acts cannot constitute a marriage. And where one of the parties is under the age of consent the contract is equally invalid as if both were of insufficient age (c).

As regards the consent of parents or guardians requisite for the marriage of minors under the age of 21 years, the next chapter (III.) should be consulted.

#### SECT. 5.—OF MENTAL INCAPACITY.

The consent of a free and rational agent being necessary to the validity of the marriage contract, it follows that neither lunatics nor idiots are capable of entering into that contract. But the subsequent insanity of a person who was of sound mind at the time of the celebration does not avoid it, nor release the parties from the duties of their marriage vow (d).

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sioners, after citing the early ages of marriage in certain districts of Lancashire, as disclosed by the Census Tables, are of opinion that upon the whole it is better to retain the present law unaltered than either to fix the stigma of bastardy upon the children of parents below the ages which might be substituted for 14 and 12, or to introduce uncertainty as to marriages contracted under such ages. Few persons who have considered the evils resulting from immature marriage will concur in this opinion. By the present law of France the male must have attained the full age of 18, and the female that of 15, to be capable of marriage.

(c) It is felony unlawfully and carnally to know and abuse any girl under the age of 10 years; and a misdemeanor unlawfully and carnally to know any girl between the ages of 10 and 12.

(d) *Parnell v. Parnell*, 2 Hagg. Cons. R. 169.



In the following passage Blackstone states the general rule on the subject, which is fully confirmed by modern authorities :—" A fourth incapacity is want of reason, without a competent share of which, as no other, so neither can the matrimonial contract be valid. It was formerly adjudged that the issue of an idiot was legitimate, and consequently that his marriage was valid—a strange determination, since consent is absolutely requisite to matrimony, and neither idiots nor lunatics are capable of consenting to anything. And therefore the civil law judged much more sensibly when it made such deprivations of reason a previous impediment, though not a cause of divorce, if they happened after marriage. And modern resolutions have adhered to the reason of the civil law by determining that the marriage of a lunatic, not being in a lucid interval, was absolutely void " (a).

It is not material whether the want of legal consent arises from idiocy or lunacy or from both combined. If the incapacity be such, arising from either or both causes, that the party is incapable of understanding the nature of the contract itself, and incapable from mental imbecility to take care of his or her own person and property, such an individual cannot dispose of his or her person and property by the matrimonial contract any more than by any other contract (b).

Dulness of intellect, even coupled with the physical defects of deafness and dumbness, does not suffice to render a person incompetent to contract marriage. In

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(a) 1 Bl. Com. 438.

(b) Per Sir J. Nicholl, *Browning v. Reane*, 2 Phill. R. 70, 71. In this case the court decreed against the marriage of a man in the middle of life with an old woman of 70, an habitual drunkard, and of very weak understanding, but possessed of considerable property, which was to be acquired by the marriage, without the knowledge of her friends or any settlement whatever.

a case in which it was sought to impeach the validity of a marriage on the ground of want of mental capacity, it was held that an inability in general to understand others, especially strangers, with occasional inability to appreciate simple arithmetical calculations, was insufficient to show incapacity to enter into the marriage contract; and the Court of Chancery refused to direct an issue to take the opinion of a jury upon the marriage (c).

*Marriage of a lunatic during a lucid interval.*] The marriage of a lunatic, not under a commission of lunacy, during a lucid interval, is valid. In cases of the most inveterate malady it has been held that there are lucid intervals when the mind is apparently rational upon all subjects, and no symptom of delusion can be called forth on any subject; so that the disorder being for that time absent, legal acts may be performed. It is however difficult to prove a lucid interval, because the total absence of all delusion cannot easily be ascertained. In a case where the testamentary capacity of a party was in question, the sanity of the moment was, in a great measure, inferred from the internal character of the wisdom of the act itself, and the will was established (d). But with respect to marriage, the entire absence of wisdom in the act will certainly not be conclusive against the sanity of the party. The man, in the best exercise of his reason, might not be a wise man; and the question in such a case is as to the sanity of the party, not the wisdom of the act. Lord *Stowell* was of opinion that no evidence would be sufficient to induce the court to pronounce against the sanity of an act to which the

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(c) *Harrod v. Harrod*, 1 Kay and John. 4.

(d) *Cartwright v. Cartwright*, 1 Phil. R. 90.

man himself, not disqualified by proof of insanity, adheres, and from which he does not himself pray to be relieved (a).

The nature and evidence of insanity have been discussed in several elaborate judgments by eminent judges. With respect to lucid intervals, Lord *Thurlow* ruled that "the burden of proof attaches on the party alleging such lucid interval, who must show sanity and competence at the period when the act was done, and to which the lucid interval refers; and it is of equal importance that the evidence in support of the allegation of a lucid interval should be as strong as where the object of the proof is to establish derangement" (b).

*Persons found to be insane under a commission of lunacy.*] The existence of a commission of lunacy against a person is an effectual bar to his contracting a marriage even during a lucid interval. By 51 Geo. 3, c. 87, it is enacted that, "in case any person who has been or at any time hereafter shall be found a lunatic by any inquisition taken, or to be taken by virtue of a commission under the great seal of Great Britain, or the great seal of Ireland respectively, or any lunatic or person under a phrensy, whose person and estate by virtue of any Act of parliament, now or hereafter, shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the Lord High Chancellor of Great Britain or Ireland, or the lord keeper or lords commissioners of the great seal of Great Britain or Ireland for the time being, or such trustees as aforesaid, or the

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(a) *Turner v. Meyers*, 1 Hagg. Cons. R. 416.

(b) *Attorney General v. Paruther*, 3 Br. C. C. 444.

major part of them respectively, as the nature of the case shall require, *every such marriage shall be and is hereby declared to be null and void to all intents and purposes whatsoever*" (c). A marriage within this Act is void without any sentence of the Divorce Court. To marry a lunatic, the custody of whose person has been granted to committees, is a contempt of the Court of Chancery.

Where parties have been found to be insane under a commission of lunacy from a period antecedent to their marriage, the Court of Chancery will direct an inquiry as to the propriety of instituting proceedings in the Divorce Court for setting aside such marriages; and on the report in favour of such proceedings, will direct them to be taken accordingly.

*Mental incapacity produced by intoxication.*] Intoxication being, in truth, temporary insanity, mental incapacity produced by it would, it is presumed, have the same effect as insanity. This may be inferred from a passage in a judgment of Lord Stowell (d), in which he stated that if the party was in a state of disability, natural or artificial, which created a want of reason or volition amounting to an incapacity to consent, the court would not hesitate to annul the marriage. There are, however, no decided cases on the point in the English courts; but in an Irish case, where the deceased was of such grossly drunken habits that his mental powers were affected, and he was subject to *delirium tremens*, but real or permanent insanity was not proved, it was held that no sufficient case was made out to impose a necessity of proving

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(c) This is a re-enactment of 15 Geo. 2, c. 30.

(d) *Sullivan v. Sullivan*, 2 Hagg. Cons. Rep. 246.

capacity of the deceased to contract marriage (a). The marriage of a lunatic being absolutely void, the validity of his marriage may be questioned after his death in a suit as to the right to administer.

*Deaf and dumb persons.]* A person deaf and dumb from birth is not on that account incapable of marrying, but may contract matrimony by signs. Care, however, should be taken to ensure on the part of the deaf and dumb person a complete acquiescence in and comprehension of the proceedings connected with the solemnization of the marriage. In the case of notice to the superintendent registrar, if that officer is satisfied that the dumb person fully understands the effect of the statutory forms, and of the declarations to be made at the time of the marriage, and that he can testify by signs or otherwise (if necessary, through some person who can act as interpreter), his assent to the proceedings, there can be no objection to allowing the ceremony to take place after due notice given and issue of certificate or licence.

#### SECT. 6.—PHYSICAL INCAPACITY.

Another impediment to lawful matrimony arises from the incapacity of either party to satisfy one of the essential duties for which marriage was ordained. It does not, however, come within the design of the present work to enter into an examination of this delicate subject; information may be found upon it in works treating specially of divorce.

As a general rule a three years' cohabitation is required before a suit can be entertained for annulling

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(a) *Legeyt v. O'Brien*, Milwards (Irish) Eccl. Rep. 325.

a marriage on the ground of physical defect, or other conditions comprised within the term *impotence*. Either party may promote such a suit in the lifetime of the other, but there must be such evidence as will satisfy the court that, at the time the marriage took place there existed an impediment to consummation, and that the defect is incurable.

SECT. 7.—OF MARRIAGES OBTAINED BY FORCE, FRAUD, OR ERROR.

*Marriages obtained by force, or under duress.*] Consent being the essence of the matrimonial contract, it follows that the party to such contract must be a free agent. A marriage had when either party is under the influence of force or fear, or under duress, is invalid. But it must appear beyond question (where there was no forcible abduction) that the marriage was purely the effect of compulsion, and that there was an absolute unwillingness, or at most an apparent consent only, influenced by fear of violence, to enter into the solemn engagement. It is said, however, that the effect of this impediment, may be done away with by a spontaneous cohabitation (*b*). Such cases of marriage under force or terror are now of rare occurrence, although in the time of the Fleet parsons they were not uncommon. The officiating minister or civil officer would of course stop the proceedings where any doubt presented itself to his mind, when the parties were before him, as to the entire freedom of consent of either party (*c*).

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(*b*) Aycliffe.

(*c*) In *Wakefield's Case* a marriage with a school-girl of fifteen was accomplished by fraud and contrivance at Gretna Green: an Act of parliament was passed to dissolve the marriage. See *Annual Register*, vol. 69, p. 316.

*The abduction of women.*] By 9 Geo. 4, c. 31, s. 19, the forcible abduction, or detention against her will, of any woman who shall have any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or shall be an heiress presumptive, or next of kin to any one having such interest, with intent to marry or defile her, is a felony, punishable with penal servitude or imprisonment.

The unlawful abduction of *any unmarried girl* under the age of 16 from her parents, or persons having the charge of her, is a misdemeanor by the same statute; the consent of the girl is no legal excuse if she is taken away out of the possession of her parents or guardians against their will (a).

*Of fraud and error.*] A marriage may be annulled on the ground of fraud. Where a marriage had been had under circumstances inferring fraud and circumvention between a person of weak mind and the daughter of his trustee and solicitor, it was declared null and void (b). There may also be nullity by reason of error, namely, by mistake of the person, as when a man, intending to marry *Jane*, through error, goes through the marriage ceremony with *Anne*. But it is perfectly established in our law that no deception

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(a) The 20th section of 9 Geo. 4, c. 31, enacts "That if any person shall unlawfully take, or cause to be taken, any unmarried girl, being under the age of 16 years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to suffer such punishment by fine or imprisonment, or by both, as the court shall award."

(b) *Lord Portsmouth's Case*, 1 Hagg. 356. See also *Hull v. Hull, falsely called McArthur*, 15 Jur. 710; 17 L. T. 235.

as to fortune, condition, or personal qualities will invalidate a marriage. It is held that error, founded on false representations about the family or fortune of the individual, does not affect the validity of the contract, as the law expects that parties will use timely and effectual diligence in obtaining correct information on such points before entering into so solemn an engagement; and it makes no provision for the relief of a blind credulity, however it may have been produced (c).

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(c) Canonically, besides error of the person, there are three other species of error, all of which are now obsolete—error of condition, error of fortune, and error of personal qualities.

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## CHAPTER III.

### OF THE MARRIAGES OF MINORS AND THE CONSENT OF PARENTS OR GUARDIANS REQUIRED THERETO.

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#### SECT. 1.—GENERALLY AS TO CONSENT TO THE MARRIAGE OF MINORS.

THE law as to consent to the marriages of minors being substantially the same whether the marriage is to be solemnized according to the rites of the Established Church or otherwise, it is convenient to treat of this subject in a separate chapter.

By the ancient common law of England if the parties had attained the age of consent, namely, 14 for the male and 12 for the female, they might legally contract marriage without consent of parents or guar-

dians. The consent of parents to the marriage of minors was made a preliminary requisite by the early councils and canons of the Church of Rome, but the Council of Trent resolved that want of consent should not render a marriage invalid, and by the universal matrimonial law of Europe before the Reformation the consent of parents was not requisite, *ex necessitate*, to the validity of the contract. By the canon law in England the consent of parents or guardians to the marriage of children under 21 years of age was enjoined and required (*a*). The want of such consent was, as the ecclesiastical lawyers expressed it, *impedimentum impeditivum*,—an impediment which threw an obstacle in the way of the celebration, but not an impediment which affected the validity of the marriage if it was once solemnized.

Upon this footing the matter remained until by Lord Hardwicke's Act (22 Geo. 2, c. 33) all marriages solemnized *by licence*, where either of the parties, not being a widower or a widow, was under the age of 21 years, without the consent therein required, were rendered absolutely null and void (sect. 11). But the marriages of minors without consent *after banns* were valid, unless the banns had been forbidden by parents or guardians openly and publicly in church at the time of publication. The statute omitted to provide for the frequent cases in which there was no person living who had a right to give consent, as where the father was dead and the mother had married

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(*a*) The 100th canon (of 1603) decrees that "No children beneath the age of one and twenty years complete shall contract themselves or marry without the consent of their parents," &c. Canon 62 forbids the minister to marry parties under 21 years of age without the consent of parents, upon pain of suspension *per triennium*.

again, or where both parents were dead and no guardian had been appointed either by the father or the Court of Chancery. Instances of great hardship resulted from this state of the law (*a*).

Since 1st November, 1828, under the present Marriage Acts, the want of consent does not affect the validity of a marriage after celebration. The consent required is only directory, and the marriage is not rendered void if solemnized without consent; moreover, it is not a preventient impediment where there is no person having authority to consent (*b*). Still, as a general rule, the consent of parents or guardians is required for the marriage of any person, not being a widower or widow, under 21 years of age.

**SECT. 2.—PERSONS COMPETENT TO GIVE CONSENT FOR THE MARRIAGE OF MINORS.**

The *father*, if living, of any party under 21 years of age (such party not being a widower or a widow), or, if the father be dead the lawfully appointed *guardian or guardians* (*c*), or one of them, of the party so under age; and in case there shall be no

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(*a*) For instance, the marriage of a minor by licence, with the consent of her mother, who was supposed to be a widow, was declared void when it was afterwards discovered that the father was living at the time of the marriage: *Hayes v. Watts*, 3 Phill. Rep. 43; *Johnson v. Parker*, ib. 38.

(*b*) 4 Geo. 4, c. 76, s. 14; 6 & 7 Will. 4, c. 85, ss. 12, 25.

(*c*) As to "lawfully appointed guardians" it is to be remarked that the power of appointing guardians to infant children can be exercised only by the father, or by the Court of Chancery. By the father the mode of appointment is by deed or by his last will and testament, duly executed and attested by two or more witnesses. The power of appointing guardians does not extend to the mother. The Court of Chancery, on petition by the next friend of an infant whose father is dead, will appoint a guar-

such guardian, then the mother of such party if unmarried, and if there be no mother unmarried, then the guardian or guardians of the minor appointed by the Court of Chancery, if any, or one of them, shall have authority to give consent to the marriage of such party; and such consent is required for the marriage of such party so under age, unless there shall be no person authorized to give such consent (4 Geo. 4, c. 76, s. 16).

In case the father of either of the parties to be married shall be *non compos mentis*, or the guardian or guardians, mother, or other person whose consent is made necessary if the father be dead, shall be *non compos mentis*, or in parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent to a proper marriage, then any person desirous of marrying may apply by petition to any of the judges of the Court of Chancery, who are respectively empowered to proceed upon such petition in a summary way, and in case the marriage proposed shall upon examination appear to be proper, such judge shall judicially declare the same to be so, and such judicial declaration shall be deemed and taken to be as good and effectual to all intents and purposes as if the father, guardian, or mother of the person so petitioning had consented to such marriage. (4 Geo. 4, c. 76, s. 17.)

It will be observed that where the father is living, and of sound mind, his consent is rendered necessary, even though he be out of the country, or possibly his

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dian; and where a testamentary guardian dies, or has refused to act, the court will appoint a new guardian on petition. Where several testamentary guardians are appointed the right of guardianship will go to the survivor. The court will not remove a mother, without misconduct, who is appointed testamentary guardian, on account of her being married to a second husband.

whereabouts be unknown. The mother's consent is insufficient in such cases in the present state of the law. Moreover, the discretionary power of consent vested in the judge of the Court of Chancery applies exclusively to the case of the *guardian* or *mother* unreasonably withholding consent, and does not extend to the case of a *father* either beyond the seas, or unreasonably withholding his consent (*a*).

SECT. 3.—MODE IN WHICH CONSENT IS EXPRESSED  
OR IMPLIED.

It is not necessary that a formal and written consent to a marriage shall be given; the approbation of it by the person whose consent is required may be collected from his conduct. Nor is consent necessary to the marriage itself at a particular time and place; a general consent is sufficient (*b*). Consent, after having been given, may however be retracted, since the parental authority continues up to the time of marriage; but this principle must be taken with reasonable limitations (*c*).

Before a licence is granted by a surrogate or other person having authority to grant the same, where either party, not being a widower or a widow, is under the age of 21 years, one of the parties must personally swear that the consent of the person or

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(*a*) In the case of the poorer classes liberty to apply to the Court of Chancery is practically no relief, and minors amongst them must either wait until they are of full age, or be married in church after banns.

(*b*) *Smith v. Huson*, 1 Phill. 297, and the cases there cited.

(*c*) *Hodgkinson v. Wilkie*, 1 Hagg. Con. 265. A father may withdraw his consent at any time previous to the actual solemnization: *Yonge v. Furze*, 26 L. J. 117, Ch.

persons whose consent to the marriage is required has been obtained thereto, or that there is no person having authority to give such consent (*d*).

The like consent is required to any marriage in England by licence or certificate of the superintendent registrar as is required for marriage by licence according to the rites of the Church of England (*e*); and before such licence or certificate for the marriage of a minor can be granted a solemn declaration, to the same effect as the oath before a surrogate, must be made by one of the parties (*f*).

It is the practice of some surrogates to require either a written consent, or a personal intimation of consent by the parent or guardian, in addition to the oath of one of the parties. At the office of the vicar general of the Archbishop of Canterbury it is the practice never to grant a licence where either of the parties is under 16 years of age without written consent, or the personal attendance of one of the parents, &c., to signify consent. In other cases the affidavit of one of the parties that consent has been given is considered sufficient, unless any circumstance should give rise to a doubt on the subject, in which case the licence is refused until a written consent is produced, or one of the parents of the minor shall attend with the party (*g*).

*Consent in the case of marriage after banns.]* In the case of banns consent is always presumed in the absence of any notice or expression of dissent. If the parent,

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(*d*) 4 Geo. 4, c. 76, s. 14.

(*e*) 6 & 7 Will. 4, c. 85, s. 10.

(*f*) 19 & 20 Vict. c. 119, s. 2.

(*g*) Information of Mr. H. Watts, of the Vicar General's Office, Doctor's Commons.

or other person having authority to consent, shall openly and publicly declare or cause to be declared in the church or chapel where the banns are published, at the time of such publication, his or her dissent to such marriage, such publication of banns, even though it may have been made on one or two previous Sundays, is absolutely void and of no effect (*a*). When dissent is thus expressed there is of course no due publication of banns, and to solemnize matrimony in such a case is felony. The publication of banns will overcome the difficulty which sometimes arises with respect to obtaining the consent of fathers beyond the seas, or who, from their whereabouts being unknown, or other circumstances, cannot be communicated with: the parties are enabled to marry, notwithstanding the want of such consent, after banns published without dissent.

SECT. 4.—HOW THE MARRIAGES OF MINORS MAY BE  
OBJECTED TO.

The banns of minors may be *forbidden* by parents or guardians in the manner directed by the statute of 4 Geo. 4, c. 76. So, also, the issue of the superintendent registrar's certificate may be forbidden by "any person authorized in that behalf," by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of

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(*a*) 4 Geo. 4, c. 76, s. 8, which further enacts that no minister solemnizing a marriage between persons, one or both of whom shall be under the age of 21 years, after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriage without consent of parents, &c., unless such minister shall have notice of the *dissent* of such parents or guardians.

*How Marriages without Consent may be Forbidden. 67*

such intended marriage in the "Marriage Notice Book," and by subscribing thereto his or her name and place of abode, and the character in respect of either of the parties by reason of which he or she is so authorized, and in case the issue of any such certificate shall have been so forbidden, the notice and all proceedings thereupon shall be utterly void (b). Every person whose consent to a marriage by ecclesiastical licence is required, is authorized to forbid the issue of the superintendent registrar's certificate, whether the marriage is intended to be by licence or without licence (c).

The grant of a licence for marriage by a surrogate, or other person having authority to grant licences for marriages according to the rites of the Established Church, may be hindered if a caveat be entered in conformity with the 11th section of 4 Geo. 4, c. 76. In like manner a caveat may be entered by any person (on payment of 5s.) and lodged with the superintendent registrar against the grant of licence or certificate by him. (6 & 7 Will. 4, c. 85, s. 13.)

Thus, with respect both to church marriages and other marriages, two methods of stopping or interrupting the pre-requisite formalities are provided by the law. It sometimes happens, however, that although the banns or issue of certificate have not been formally "forbidden" nor any caveat entered against the grant of a licence, the clergyman or superintendent registrar receives information which leads him to believe that the requisite consent has not been given to the marriage of a minor; in such cases he will be justified in pausing for the purpose of making inquiries in order to satisfy himself whether the marriage ought to proceed; and should it appear that a surrogate's licence has

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(b) 6 & 7 Will. 4, c. 85, s. 9. (c) 6 & 7 Will. 4, c. 85, s. 10.



been obtained by means of a false oath as to consent, or that a superintendent registrar's licence or certificate has been procured by means of a false notice or declaration, it would be proper to decline further proceedings upon the authority of a document obtained by means of perjury or fraud (a).

#### SECT. 5.—ILLEGITIMATE MINORS.

An illegitimate minor can have no "lawfully appointed guardian" but one appointed by the Court of Chancery. It is the usual practice, however, where the reputed father has named any person to act in that capacity to adopt his nomination. Where no guardian has been appointed by the Court of Chancery the marriage of an illegitimate minor may lawfully take place without any consent, for there is no person having authority to consent; neither the mother nor the putative father has a power of consenting to such a marriage (b). Therefore, in the affidavit leading to a surrogate's licence, or in the solemn declaration leading to a superindendent registrar's licence or certificate for the marriage of the minor, the fact that there is no person

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(a) The usual form of ecclesiastical licence contains an express inhibition to ministers not to proceed to the celebration of the marriage if there shall come to their knowledge "any fraud suggested, or truth suppressed, at the time of obtaining the licence," and in that case the licence is to be void and of no effect.

(b) Under Lord Hardwicke's Act the marriage by licence of an illegitimate minor without the consent of a guardian appointed by the Court of Chancery was void, the mother or reputed father of such a minor not being within the meaning of the statute. Lord Stowell held that a power of consenting had been given to *lawful* parents alone, and that natural parents were not intended by the Act: *Horner v. Horner*, 1 Hagg. Cons. Rep. 357.

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whose consent is necessary will have to be sworn or declared to (as the case may be) when the licence or certificate is applied for.

The natural mother of an illegitimate minor cannot lawfully forbid the banns or obstruct the grant of a licence or certificate on the ground that she has not given her consent to the marriage ; her consent is not requisite, nor is it of any legal force if given (c).

**SECT. 6.—OF THE FORFEITURE OF PROPERTY ACCRUING  
FROM MARRIAGES WITHOUT CONSENT.**

We have seen that the want of consent of the parents or guardians of persons under age will not affect the validity of marriages after they have been once solemnized. It sometimes happens, however, that parties, in their eagerness to effect matrimony, resort to false swearing or other fraudulent proceedings in order to evade the requirements of the law which interdicts the marriage of minors without consent. The party guilty of any false oath or other fraud in procuring a marriage to be solemnized between persons, one or both of whom shall be under the age of 21 years (not being a widower or widow), is liable to forfeit all property accruing to him or her from the marriage. The attorney general may sue for a forfeiture of the property accruing to the offending party in the Court of Chancery at the relation of a parent or guardian of the minor, and the court may declare such forfeiture, and direct the property to be secured for the benefit of the innocent party, or of the issue of the marriage or of any of them, in such manner as the court

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(c) *Priestley v. Hughes*, 11 East, 1.

may think fit. If both the parties so contracting marriage shall in the judgment of the court be guilty of such offence, the property may be settled and secured immediately for the benefit of the issue of the marriage, subject to such provision for the offending parties by way of maintenance as the court shall think reasonable (a).

It is in like manner provided by 19 & 20 Vict. c. 119, s. 19, with respect to non-church marriages, that if any valid marriage shall be had "by means of any wilfully false declaration, notice or certificate made or obtained by either party," it shall be lawful for the attorney general or solicitor general to sue for a forfeiture of all the estate and interest in any property accruing to the offending party by such marriage, and the proceedings thereupon and the consequences shall be the same as are provided in the like case with regard to marriages solemnized by licence between parties under age according to the rites of the Church of England in the Act of 4 Geo. 4, c. 76 (b).

SECT. 7.—AS TO CONSENT WITH RESPECT TO WARDS IN  
CHANCERY.

Marrying a ward in chancery without the consent of the court has always been treated as a contempt. Not only have persons concerned in abetting such marriages been punished by committal to prison during the pleasure of the court, but clergymen who have performed

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(a) See 4 Geo. 4, c. 6, s. 23. Application must be made to the attorney general within three months of the discovery of the marriage by the parent or guardian.

(b) The 6 & 7 Will. 4, c. 85, s. 43, contains a similar provision. The first case under 19 & 20 Vict. c. 119, occurred in Easter Term, 1872.

the ceremony have in several cases been ordered to attend in court, and have been severely reprimanded.

The mere filing of a bill in the Court of Chancery relative to infants or their estates will constitute them wards of court; and the court has jurisdiction over the infant whether the father be living or dead, and whether there be a testamentary guardian or not. Hence it is necessary that great circumspection should be used and care taken to ascertain that the consent of the court has been duly obtained, in reference to any proposed marriage of a ward of court. Nor, it seems, will the want of notice that the infant is a ward of court entirely exculpate the party who has married the infant from the consequences of a contempt (c).

The Court of Chancery will restrain its wards from marrying during infancy in a manner likely to be injurious to them; it will also make an order for preventing access or communication with the objectionable parties. Where a contempt has been committed the court is enabled to compel the husband to execute a proper settlement of the ward's property. The mere fact of marriage with a female ward of court without the court's consent has been held to confer upon the court jurisdiction to decline, during the joint lives of the husband and wife, to part with a fund in its own power and custody belonging to the ward, even upon the application of the husband and wife (d). The court has even gone beyond committing the party guilty of contempt to prison; it has directed a prosecution for a conspiracy in procuring a marriage with a ward (e).

(c) *Nicholson v. Squire*, 16 Ves. 259.

(d) *Martin v. Foster*, 7 De Gex, Mac. & Gord. 98.

(e) Lord Chancellor Eldon, in a case where the marriage was had under flagrant circumstances, said it ought to be generally understood "that those who engage in a conspiracy to steal the

## SECT. 8.—APPRENTICES AND SOLDIERS.

*Apprentices.*] Articles of apprenticeship (or indentures, as they are commonly called) usually contain a covenant that the apprentice shall not marry during the period for which he is bound. If he should break this covenant by marrying during his term of service, his master would have a remedy by action against the apprentice, or his sureties, if any. But the consent of the master to the intended marriage of his apprentice is not requisite, and consequently the master cannot legally interpose to forbid the banns or otherwise to prevent the celebration of the marriage. The apprentice, however, while he is a minor, must of course obtain the consent of his parent or guardian.

*Marriages of soldiers.*] It should be known that by the Queen's regulations for the army the previous consent of the commanding officer is requisite to the marriage of a soldier, otherwise his wife cannot be recognised as such by the rules of military discipline (*a*). Although the commanding officer is not authorized by law to *forbid* the banns or other preliminary proceedings, he may take other steps to check an improvident marriage. Every superintendent registrar is therefore instructed by the registrar-general to transmit to the commanding officer a copy of the notice in case of the intended marriage of a soldier.

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person of a young lady for the sake of her fortune will find themselves much mistaken in conceiving that they are not within the reach of any other punishment than commitment. It should be known that by indictment, directed by this court, persons engaging in a conspiracy for such a species of robbery will be liable to severe punishment:" *Wade v. Broughton* 3 Ves. & B. 172.

(*a*) See extract from the Queen's Regulations, Appendix, No. VIII., *post*.

SECT. 9.—RECAPITULATION AS TO CONSENTS NECESSARY.

It may be useful to recapitulate the persons qualified to give consent to the marriage of minors. These are:—

1. The father, if living ; if he be dead,
2. The lawfully appointed guardian or guardians ;  
if none,
3. The mother, if unmarried ; if there be no mother  
unmarried,
4. The guardian or guardians appointed by the  
Court of Chancery.

Should there be none of the above, there is no person authorized to give consent.

If the father be *insane*, or

If the guardian or guardians, or mother, be *insane*,  
or *beyond the seas*, or *unreasonably withhold*  
*consent*, the minor may apply by petition to the  
Court of Chancery for its consent.

In the case of illegitimate minors, the only persons competent to give consent are guardians appointed by the Court of Chancery ; if there be no such guardians, there is no person authorized to give consent.

*Registrar general's instructions to his officers as to receiving notice of the intended marriage of minors.*] The following instructions have been given by the registrar general for the guidance of superintendent registrars, &c., when notice is proposed to be given for the marriage of persons not of full age :—

“It has come to the knowledge of the registrar general that, notwithstanding the penalty which attaches to every person who may be convicted of

having wilfully made and subscribed a false declaration leading to a marriage, instances have occurred in which a superintendent registrar's certificate or licence has been obtained on the faith of statements which, after the marriage has been celebrated, have been proved to be false.

"Independently of the serious consequences that might arise were doubt to be thrown hereafter on the perfect validity of marriages thus fraudulently obtained, it is manifestly of great importance to the interests of the parties themselves, as well as to their relatives, that every possible care should be taken by officers empowered to attest marriage notices to prevent clandestine or improper marriages;—therefore, whenever you have strong grounds for believing—

"That the consent of a parent or guardian has not been obtained, when such consent is required ;

"That persons who are minors have been stated to be of full age ;

"That the parties are within the prohibited degrees of affinity ; or,

"That there is any other lawful impediment to the marriage, you will, in the registrar general's opinion, be justified in requiring from the parties some satisfactory corroboration of the perfect truth of the statements set forth in the declaration before you attest it by your signature."

*Requirements of the Code Napoléon as to consent.]*

In France, as well as in other continental states, the requirements with respect to the consent of parents to the marriage of minors are much more stringent than in England. By the Code Napoléon a son under 25 years of age and a daughter under 21 years are unable to contract matrimony without the

consent of the father and mother, or of the father in case they disagree. If one of the parents is dead, the consent of the other suffices, and if both be dead or unable to manifest consent, the grand-parents take their places ; if there are no grand-parents, the consent of a family council is necessary. Strict proof of the death or absence of parents is required. When the future spouses are of full age, the man more than 25 and the woman more than 21, the consent of parents, &c., is not indispensable, but it must be asked, and, if refused, *actes respectueux*—formal documents respectfully asking for consent—must be resorted to. When the man is between 25 and 30, or the woman between 21 and 25, consent must thus be asked for three times at intervals of a month ; after the age of 30 for men and 25 for women, one *acte respectueux* is sufficient, and the parties may marry a month after its notification. Code Nap., Art. 148, &c. (a).

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(a) For further information as to the law relating to marriage prescribed by the Code Napoléon, see Appendix, No. X., *post*.



## CHAPTER IV.

### OF MARRIAGES ACCORDING TO THE RITES OF THE CHURCH OF ENGLAND.

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#### SECT. 1.—PRELIMINARY REQUIREMENTS FOR MARRIAGE BY THE ESTABLISHED CHURCH.

FROM the date of Lord Hardwicke's Act (1753) to the operation of the Act 6 & 7 Will. 4, c. 85, which first authorized marriages before a registrar in registered buildings or in district register offices, the power of solemnizing lawful marriages in England, when the parties were neither Jews nor Quakers, was vested solely in the clergy of the Established Church; and about 76 per cent. of the whole number of marriages are still so solemnized.

For the legal constitution of any marriage according to the rites of the Church of England, it is necessary that it should be preceded by the publication of banns, or be authorized either by a licence (common or special) dispensing with banns, or by a superintendent registrar's certificate,—the latter being equivalent to banns (*a*). A due compliance with certain forms is requisite in order to obtain the authority under which a marriage may be solemnized; the legal incidents connected with these pre-requisites will therefore be stated with some fulness of detail.

It is necessary to premise, however, that church marriages founded on banns, common licence, or superintendent registrar's certificate, cannot lawfully be solemnized in all churches and chapels, but only in parish churches or ancient chapels wherein banns were usually published at the time of stat. 26 Geo. 2, c. 38, and in other churches or chapels specially authorized by order in council or episcopal licence (*b*). If any persons knowingly and wilfully intermarry according to the rites of the Church of England in any other place than a church or chapel wherein marriages may be lawfully solemnized (unless by special licence of the Archbishop of Canterbury), or without due publication of banns, or without licence duly granted, or without a superintendent registrar's certificate issued after due notice, the marriage of such persons will be null and void (*c*). *Both parties must, however, have*

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(*a*) In the year 1871, out of 144,663 marriages according to the rites of the Established Church, 121,962 were by banns, 16,960 by ordinary licence, 14 by special licence, and 4196 on production of registrar's certificate. See Ann. Rep. of Registrar General.

(*b*) See p. 113, as to the places wherein marriages may be solemnized.

(*c*) 4 Geo. 4, c. 76, s. 22; 6 & 7 Will. 4, c. 85, s. 42.

been cognizant of the illegality in order to nullify a marriage.

The question whether a marriage was valid when celebrated by a clergyman without banns or licence arose in the Divorce Court on a petition for judicial separation under the following circumstances:—On the day before the marriage one Greaves had gone to the then vicar of Bradford, in Yorkshire, to get a licence, and had made the appointment to be married on the following day. The vicar told him there would not be time to have the licence sent from Ripon, but he had no doubt a licence would be issued and it would be all right. The marriage was celebrated on the 18th June, 1857, and the licence was dated on the 19th June, no licence having been in existence at the time of the marriage. The husband stated that the petitioner (the wife) was aware that there was no licence before the marriage was celebrated; but the petitioner stated that she did not know that there was no licence, and, on the contrary, supposed that all necessary steps had been taken to render the marriage regular. The fact that the licence was dated on the day following the marriage was not discovered until some time afterwards. The point in dispute was whether at the time of the marriage the petitioner as well as the respondent was aware that no licence had been obtained, as it was conceded that if she did not know it, the marriage was valid. The Judge Ordinary (Lord Penzance) believed the account given by the petitioner (the wife) and as she had not “knowingly and wilfully” married without licence, his lordship held that the marriage was valid, and that the suit for judicial separation should proceed (a).

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(a) *Greaves v. Greaves*, Trin. T., 1872.

1. *Of Banns.*

As the most common mode of solemnizing marriage according to the rites of the Established Church is after publication of banns, the state of the law on this branch of our subject demands particular attention.

The term banns is derived from a Saxon word, signifying a proclamation or public notice; and it is now exclusively used to imply the announcements in a church of intended matrimonial contracts. The object of banns is to give publicity to the fact that such and such persons are about to be married, in order to ascertain whether there are any legal impediments thereto, such as consanguinity or affinity, a former marriage still subsisting, or the want of consent of parents or guardians, whose vigilance is supposed to be awakened by the publication.

It has already been stated that the ancient canon law required banns as a matter of regularity, but their omission did not affect the validity of a marriage; and it was considered that celebration by a priest in orders, without banns or licence, was as valid as celebration in full compliance with the forms ordained by the Church (*b*). This continued to be the law until Lord Hardwicke's Act, as already stated, nullified marriages without due publication of banns or licence duly granted, and made the irregular celebration of marriage in a church or chapel felony. By the present Mar-

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(*b*) The canons of the 4th Lateran council, which required the publication of banns by the minister of the parish church, are said to have been adopted by convocation held in London, 8 Edw. 3 (A. D. 1328); for celebrating a marriage without banns or licence, the minister was liable to suspension for three years. The 62nd of the canons of 1603 is to the same effect.

riage Acts, likewise, if any minister or other person shall knowingly solemnize matrimony in England without due publication of banns, unless licence be first had and obtained from some person having authority to grant the same, or unless the superintendent registrar's certificate be issued in lieu of banns, such person is guilty of felony, and any marriage so solemnized is null and void (*a*).

The unsuitableness of banns to the present state of society is commented upon by the Marriage Laws Commissioners in their report (1868). They say, that in populous places it seems universally agreed that no really valuable publicity is attained by banns, which afford no safeguard against improvidence, illegality, or fraud, and are frequently, from their great number, an inconvenient and unseemly interruption to divine service. Without proposing that banns should be prohibited, the commissioners recommend that the publication should not be required by law as a condition either of the lawfulness or of the regularity of marriage, being of opinion that "every useful purpose which can be answered by the publication of banns in the Established Church may be equally answered by the mere fact of notice to the officiating minister" (*b*). That banns afford the greatest facilities for clandestine and illegal marriages is generally admitted. In large parishes it

(*a*) 4 Geo. 4, c. 76, ss. 21, 22; 6 & 7 Will. 4, c. 85, ss. 39, 42.

(*b*) Report, p. xlii; it is added:—"The evidence which we have received abundantly proves that the dislike of this mode of publication tends to promote clandestinity, rather than to prevent it, by inducing many persons to resort for marriage to places where they are unknown. The same evidence also proves that it is practically useless and inconvenient in very populous places. . . . We are satisfied that the time has now arrived when it may be abolished, as a statutory requirement, throughout the United Kingdom, without any public disadvantage."

is impossible for the clergyman to make personal inquiries respecting persons who may take up a temporary or nominal residence for the purpose of having the banns published in the parish church. Hence, persons who desire to contract an illegal marriage have only to choose one of the populous parishes of our large towns, where they readily escape notice. Any inquiries that are made in such parishes are inevitably left to the parish clerk, whose interest it is not to be too particular in verifying the statements made by the parties. A declaration similar to that required for marriages before a registrar, with the penalties of perjury for falsely declaring, would provide some check against the contraction of illegal marriages (c).

*Previous notice for banns.*] In order to procure the publication of banns the parties to the intended marriage, or one of them, or some person on their behalf, must give, in writing if required, due notice to the clergyman of the parish or chapelry in which they reside, with their names and residences (d). This notice is usually given to the parish or church clerk on behalf of the minister; the customary fee for the publication (usually 1s.) is at the same time paid. The 7th section of the 4 Geo. 4, c. 76, enacts, that no minister *shall be obliged* to publish the banns of mar-

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(c) A simple form of declaration, to be incorporated with the "Banns Book," has been proposed by the Rev. S. C. Wilks. See his tractate, *Banns a Railroad to Clandestine Marriages*, 1864. A similar proposal has been made by a committee of the lower House of Convocation, whose report is printed in the Report of the Marriage Laws Commission. See Appendix, No. III, *post*.

(d) There is no accredited form of notice for banns; the common practice is for the parish clerk to take a verbal notice, either entering in the banns book, or writing on a piece of paper, the particulars as they are told him. In this process, unless care is taken, errors are liable to be made in entering names, &c.

riage between any persons whomsoever, unless the persons to be married shall, *seven days at the least* before the time required for the first publication of such banns, deliver, or cause to be delivered, to such minister a notice in writing, dated on the day on which the notice shall be so delivered, of their true Christian names and surnames, and of the house or houses of their respective abodes within such parish, &c., and of the time during which they have dwelt, inhabited, or *lodged* in such house or houses respectively. Wherefore, although it is not imperative upon the minister to require seven days' notice before the first publication of banns, or absolutely requisite that the parties (or one of them) shall have resided seven days in the parish previous to giving such notice, yet the minister, if he think fit, may require seven days' notice; and he may delay the first publication of banns until seven days after the notice shall have been delivered to him. He will thus be afforded time for any inquiries which he may consider it his duty to make concerning the parties. The seven days' notice is, however, not always insisted on, and may safely be waived when the clergyman is acquainted with the parties. No legal penalties are incurred by the false statement of any of the particulars required to be given as to places of abode and length of residence in such places of abode.

At the time of the notice for banns being given it is obviously proper that inquiries should be made of the party giving it, with a view to ascertain whether any impediment to the marriage exists; this, however, is not enjoined by statute, nor has the law given the clergyman express power to compel any answers.

The minister should decline publishing the banns after the discovery of any *false statement* in the notice given, or in the event of any impediment or hindrance to the marriage being shown to his satisfaction.

*Banns book.*] A proper book of substantial paper, suitably marked and ruled for the purpose, is to be provided by the churchwardens from time to time for the registration of banns; and the banns are to be published from such book by the officiating minister, and not from loose papers. After each publication the book is to be signed by the officiating minister, or by some person under his direction (a).

*How banns are to be published.*] All banns of matrimony must be published in an audible manner in the parish church, or in some public chapel in which banns may lawfully be published, of or belonging to the parish or chapelry wherein the parties to be married (or one of them) shall dwell, according to the form of words prescribed by the rubric prefixed to the office of matrimony in the Book of Common Prayer, upon three several *Sundays* (b) preceding the solemnization of marriage, *immediately after the second lesson* of the morning service, or of the evening service, if there shall be no morning service in such church or chapel upon the Sunday upon which such banns shall be so published (c).

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(a) 4 Geo. 4, c. 76, s. 6. The banns book is to be "marked and ruled respectively in manner directed for the register book of marriages" in force at the date of the statute. Banns books are published by Messrs. Shaw & Sons, Fetter Lane, London.

(b) By the 62nd canon of 1603, the banns might be published "on three Sundays or holidays;" consequently, at Easter the publication might be made on three successive days. The Marriage Acts restrict the publication to Sundays; it is not indispensable, however, that banns shall be published on three consecutive Sundays.

(c) 4 Geo. 4, c. 76, s. 2. A controversy has arisen concerning the proper time for publishing banns. Some clergymen are of opinion that banns should be published *after the Nicene Creed* in the morning service, as formerly, and after the second lesson in the evening service only. They maintain that the statute was not intended to alter the existing arrangements as to the morning publication, but merely to provide for the evening. It is clear, however, that a fair construction of the words of the statute is opposed to this view.



The form of words prescribed by the rubric is as follows :—" I publish the banns of marriage between M., of —, and N., of —. If any of you know cause or just impediment why these two persons should not be joined together in holy matrimony ye are to declare it. This is the first [*second, or third*] time of asking." Neither the rubric nor the Marriage Acts require that the parties shall be described according to their *condition* as bachelor, spinster, widower, or widow, although this is frequently done (*a*). The parties should be described as of their respective *parishes*, and if both are parishioners it is customary to say " both of this parish " (*b*).

*How banns may be forbidden.*] After the minister has published the banns for the first, second, or third time, and thus inquired of the congregation concerning the freedom of the parties from lawful impediments, the banns may be forbidden by any person authorized in that behalf. In the case of minors, although the want of consent of parents or guardians does not affect the validity of a marriage after it has been actually solemnized, yet if the dissent of the person having authority to consent be openly and publicly declared in the church or chapel when the banns are published, such publication of banns is absolutely void (*c*).

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(*a*) The circumstance of a woman being described in publishing the banns as a widow, who was not so, has been held not to be material : *Mayhew v. Mayhew*, 3 Maule & S. 266.

(*b*) The words in the rubric (" M., of —, and N., of —,") do not seem to render minute accuracy in describing the parish indispensable. For example, where one of the parties dwelt in the ecclesiastical district or new parish of *All Saints*, Sutton, the description " of Sutton " in the banns published in another parish church, would be sufficient if so given in the notice of banns.

(*c*) 4 Geo. 4, c. 76, s. 8.

Therefore, when the banns of minors are forbidden, the parents or others, whose consent to the marriage is required, should "openly and publicly declare or cause to be declared," at the time of the publication of banns, their dissent to such marriage. In all cases, however, where the banns, after publication, are forbidden *in any manner* (whether openly and publicly or otherwise), it would be the duty of the minister, at a fitting opportunity, to inquire into the grounds and authority for that proceeding, and having satisfied himself that the objections are valid, to treat such publication as a nullity.

*As to the names of the parties for banns.*] The object of the publication of banns being to designate the individuals intending marriage, in order to awaken the vigilance of parents and guardians, and to obtain information concerning impediments, &c., it is requisite that the names of the parties should be truthfully and correctly given. Unless the parties to be married deliver to the minister a notice in writing of their *true Christian and surnames* seven days before the publication required, he is excused from publishing the banns (*d*); and in a series of judicial decisions on the Marriage Acts it has been held that the publication must be by the known and acknowledged names of the parties as those which their relations and friends are presumed to be the best acquainted with.

Under the Act of 26 Geo, 2, c. 33, even though no fraud was intended, marriages were in several instances annulled where the banns had been published in wrong names, or with the addition or suppression of a Christian name, on the ground that such marriages

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(*d*) 4 Geo. 4, c. 76, s. 7.

were had without "due publication of banns." An important change in the law was, however, made in this respect by the 4 Geo. 4, c. 76, s. 22. By this enactment the cause of nullity is confined to cases where the parties *knowingly and wilfully* intermarry without due publication of banns, and it is necessary, in order to bring a case within this provision, to show that *both the man and the woman* were cognizant of the undue publication in a false name or names before the celebration of the marriage. Thus the fraudulent act of one of the parties will not operate to the prejudice of the other, unless a participator.

The general law regarding surnames, as laid down by Lord Chief Justice Coke, Lord Stowell, and other eminent judges, in numerous decisions, is that as surnames were originally acquired by assumption, a person may take any surname he pleases, and that the law recognises the new name when assumed publicly and *bonâ fide* (a). Even where both *Christian* and *surname* have been changed, the law will recognise the assumed names. It is further held that no Act of parliament or royal licence is needed in order to sanction a change of name; that when a name is assumed by royal licence, it is so assumed by the act of the person taking the name, and the name is not conferred by the licence, the effect of which is merely to give publicity or notoriety to the change of name (b). When any person has legally assumed a name by his own act, it is compulsory on courts of law to recognise the legal act (c).

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(a) "An assumption of a name and constant use of it for all purposes is as effectual a change as if authorized by Act of parliament, or licence under the sign manual:" *Gulliver v. Ashby*, 4 Burrows, 1929; *Leigh v. Leigh*, 15 Ves. 92; *Barlow v. Bateman*, 3 P. Wms. 65.

(b) Lord Chancellor Eldon and Tindal, C. J.

(c) *Rex v. Inhabitants of Billingham*, 3 Maule & S. 250.

The native and original name, which it is presumed the parents or guardians and relations of the party are best acquainted with is, *primâ facie*, the true name, and therefore the name which ought to be used for the publication of banns. But if the original name be not the name of repute, the latter, and not the former, is the name by which the banns should be published. For instance, where an illegitimate child has been known by the surname of the putative father, and not by that of the mother, the known and reputed name should be used on such an occasion. This rule has been declared in a variety of cases by eminent judges. In like manner, where a party has assumed a new name, not for any fraudulent purpose, but fairly and openly, and has for a considerable time been known by that name, the publication of banns by such name is a due publication (*d*).

If a party has adopted a new Christian or pre-name in such a way as to supersede the original name, and by general use for a considerable period (as two years) has acquired a kind of right to the new name, which has gone forth to the world as his proper designation, it has been decided, both in the ecclesiastical courts and in the courts of common law, that such name would be the true name for the purpose of a publication of banns (*e*). In fact the law pays

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(*d*) "If the banns be published in the names of the party by which alone he is known, and there is no fraud, whether that be the true Christian or surname or not, the marriage is good within the statute. There are cases where names acquired by general use and habit may be taken by repute as the true Christian and surname of the parties. If a person has acquired a name by repute, in fact the use of the true name in the banns would be an act of concealment that would not satisfy the public purposes of the statute, and therefore names so acquired by use and habit might supersede the use of the true name;" per Lord Stowell, *Frankland v. Nicholson*, 3 Maule & S. 260.

(*e*) *Wyatt v. Henry*, 2 Hagg. Cons. R. 220.

no regard to what the Christian or surname may originally have been, but recognises the appellation which will best serve for the identification of the party, and by which he is generally known (a).

In all cases of misnomer or misdescription in the publication of banns since 1823 (the date of the Marriage Act, 4 Geo. 4, c. 76) the sole question is, whether *both parties knowingly and wilfully* resorted to the misdescription with a fraudulent intention, or whether, on the other hand, a wrong or incomplete description in the banns was the result of error, and was not inconsistent with honesty of purpose. An inquiry into

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(a) This is clearly established by the following case, decided in 1814:—A man whose baptismal name and surname were *Abraham Langley*, was married by banns by the name of *George Smith*, having from his first coming into the parish three years previously to the marriage been known by the latter name only. His legal settlement was at Billingham, and his wife and children had no settlement there unless they had acquired it by the marriage. The question was, whether there was a due publication of banns to satisfy the statute of the 26 Geo. 2, c. 33. Lord Ellenborough, in delivering the judgment of the Court of King's Bench, said:—The object of the statute in the publication of the banns was to secure notoriety; to apprise all persons of the intention of the parties to contract marriage, and how can that object be better attained than by a publication in the name by which the party is known? If the publication here had been in the name of "*Abraham Langley*" it would not of itself have drawn any attention to the party, because he was unknown by that name, and its being coupled with the name of the woman, who probably was known, would perhaps have led those who knew her, and knew that she was about to be married to a person of another name, to suppose either that these were not the same parties, or that there was some mistake. Therefore the publication of the real (dormant) name, instead of being a notice to all persons, would have operated as a deception, and it is strictly correct to say that the *original name* in this case would not have been the *true name* within the meaning of the statute. On these grounds I think that the Act only meant to require that the parties should be published in their own and acknowledged names: *Re v. Inhabitants of Billingham*, 3 Maule & S. 250.

the motives of the parties is therefore material in the cases in which marriages are sought to be impeached on the ground of undue publication of banns.

*Where part of a name is omitted.*] All parts of a baptismal name should be set forth in publishing the banns, as composing together the name and legal description of the party. But although it is highly proper that they should be enumerated, it has been held that the publication would not on account of the omission of one or more of the Christian names be invalidated, where there was no fraud intended nor any deception practised (*b*). Where, however, there is fraud intended by both parties, and where the omission is not casual, it might be held to be such a false description as would render the banns invalid and the marriage void; as where a minor's names were *Augustus Henry Edward*, and the banns were published in the name of *Edward* only, it being proved that the party from baptism had been known by the name of *Augustus*, to the exclusion of the other names, the marriage was declared to be void (*c*).

The unintentional suppression of one of the baptismal names in giving notice for banns is not uncommon where the notice is given by one party without ascertaining the *full names* of the other. When such an omission becomes known to the officiating clergyman after the publication of banns, but *before the ceremony*, he would be justified in requiring the banns to be published afresh in the true names of the parties; or he may, in the absence of all suspicion of fraud and deception, regard the publication as valid, and

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(*b*) *Pouget v. Tomkins*, 2 Hagg. Cons. R. 143.

(*c*) *Stanhope v. Baldwin*, 1 Addams, 93.

proceed to solemnize the marriage. The discovery of the omission *after the ceremony*, often made on examining the signatures of the parties in the register, should be noticed, if at all, with due caution, as the disturbance of the minds of the parties with regard to the regularity of the proceedings is of course to be avoided. If in every case before the ceremony is performed the parties were asked to state their full names, and, moreover, when the surnames of both parties are the same, inquiries were made as to any relationship between them, much subsequent inconvenience might often be saved (a).

*Variation of names.*] Partial variations of names may arise from negligence, error, from unsettled orthography, or other causes not inconsistent with honesty of purpose; or they may arise from a fraudulent intention, disguising the name and confounding the identity nearly as much as a total variation would do. Where the variation does not so manifestly deceive, it is open to explanation, if it can be given, and if, being offered, the explanation fully protects the variation from all imputation of fraud, the publication is to be recognised as a due publication, and has all the authority of such. If the explanation should leave the matter doubtful, then evidence of intended fraud may be let in; and if no explanation is offered the court will generally conclude against the *bona fides* of the variation (b). The addition of a final *s* to the surname, as *Dobbyn*s for *Dobbyn*, was held not sufficient to affect the validity of a marriage, the variation being

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(a) See the registrar general's instructions to registrars of marriages as to errors and variations in names, Chap. VI. *post*.

(b) *Sullivan v. Sullivan*, Hagg. Cons. R. 254, where the doctrine declared by Lord Stowell upon this subject is fully stated.

too slight to mislead any one who heard the banns published (c). Where the sound is the same although the orthography is different, the publication will generally be valid—*idem sonans, idem nomen*. Banns published with an additional Christian name, if no fraud be shown, and if there be no doubt as to the identity of the parties, will be valid (d).

*Names of illegitimate persons.*] The rule that a name acquired by reputation is the proper name for publication of banns applies to the case of illegitimate children, who have no surnames except what they acquire by repute, although it is the custom for them to take the mother's surname, to which alone they are entitled, unless another name shall have been acquired by repute. In general, where there is a name of baptism and a native surname (that of the mother) those are the true names, unless they have been superseded by other names assumed and generally accredited (e).

The publication of the banns of an illegitimate person by the surname of the putative father when such person has been called and known by the father's name, is not only proper but necessary to satisfy the statute. It not unfrequently happens that a child is born out of wedlock and that the parents subsequently marry, the child being thenceforth known by the sur-

(c) *Dobbyn v. Corneek*, 2 Phill. R. 103.

(d) *Heffer v. Heffer*, 3 Maule & S. 265.

(e) 2 Hagg. Cons. R. 253. Where the illegitimate daughter of a woman who had lost her original name and acquired another, was married by banns published in her original name, not as being the daughter of such mother but of the mother's brother, who at the marriage represented himself to be her father, it was held that under the circumstances, which were surrounded with fraud, the marriage was had without due publication of banns, and both parties being cognizant thereof, was null and void: *Tooth v. Barrow*, 1 Eccl. & Adm. Rep. 371 (1854).



name of the putative father, and the fact of illegitimacy being concealed from the child and from the world at large. In such cases, when the child has been married by the surname of the putative father, no doubts concerning the validity of such marriage can arise, for the rule is perfectly clear, as before stated, that the name by which an illegitimate person is usually known and has acquired by repute, is that which should be used in the publication of banns (*a*). A repetition of the marriage ceremony after the truth has come to light, the illegitimate person then using the *mother's* surname, has sometimes been resorted to, but such a proceeding is both unnecessary and unadvisable. Equally unnecessary is any correction of the marriage register after such a discovery (*b*).

*As to residence of the parties for banns.*] It is said, on good authority, that residence in a parish *since yesterday* is sufficient to entitle a person to give notice as a parishioner for the publication of banns (*c*). Then three weeks' residence, *i. e.*, from day of the notice to the day of the last publication of banns, or, if seven days' notice is not required by the clergyman, fifteen days' residence, *i. e.*, from the first to the last publication of banns inclusive, is sufficient to entitle

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(*a*) *Sullivan v. Sullivan*, 2 Hagg. Cons. R. 238; *Wilson v. Brockley*, 1 Phill. R. 182.

(*b*) By the law of Scotland, as in France, Germany, Spain, Portugal, and most other countries in Europe, children may become legitimate by the subsequent marriage of their parents, and although the law of England does not permit a similar legitimation of offspring, it may happen, in some instances, that the parents had, before the solemnization of their marriage, entered into a pre-contract of the same nature as those which, before Lord Hardwicke's Act, were recognised in the ecclesiastical courts as nearly equivalent to actual matrimony *in facie ecclesiæ*.

(*c*) Wheatly on the Common Prayer.

the parties to be married. One of the parties must have "dwelt, inhabited, or lodged" in the parish during this short period, but a continuous unbroken residence is not necessary. Where the parties are strangers to the clergyman clearly some steps should be taken by him, as a matter of conscience, if not of strict legal requirement, to ascertain whether the statement of the parties as to residence be true. No doubt in populous town parishes such inquiries would be attended with great difficulty, nevertheless any clergyman who married all persons representing themselves to be his parishioners, when, in fact, they were not resident in his parish, without taking any steps to test the truth of their statements, would render himself liable at least to ecclesiastical censures (d).

A false description of the residence of the parties has been held to impose upon the clergyman, if the fact be known to him, the duty of not proceeding with the marriage ceremony (e).

Non-residence in the parish in which the banns are published will not affect the validity of the marriage if once the ceremony has been performed. By the

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(d) In a letter addressed by the late Bishop of London (Dr. Blomfield) to his clergy, in 1852, he says:—"Many clergy, I am persuaded, are not aware that in publishing banns, and in solemnizing marriage without due inquiry as to the residence of the parties, they are offending against the law, and that the plea which is usually urged of the difficulty of such inquiry cannot be admitted. This has again and again been declared by the most eminent and learned expounders of the law." The bishop cites, in support of this, Lord Eldon, in the case of *Nicholson v. Squire*, 16 Ves. 260, and *Priestley v. Lamb*, 6 Ves. 421; also Dr. Lushington, Dean of Arches, in the case of *Wynn v. Davies and Beavor*, Curties, 69, who says:—"The clergyman cannot be allowed to shelter himself under the excuse that he was ignorant of the fact of their non-residence in his parish, when he might and ought to have inquired into the facts."

(e) *Sullivan v. Sullivan*, 2 Hagg. Cons. 253.

4 Geo. 4, c. 76, s. 26, it is enacted that after the solemnization of any marriage under a publication of banns, it shall not be necessary in support of such marriage to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns were published, and no evidence shall be received to prove the contrary in any suit touching the validity of any such marriage (a).

In 1861 the opinion of the then Queen's advocate, Sir R. Phillimore, was taken as to the law of residence for marriage; the following are the questions submitted to him, and his somewhat dubious answers:—

*Your Opinion is requested:*

1st.—As to the meaning of the words "DWELL," "residence," and "usual abode," used in the rubric, the 62nd canon, and the 4 Geo. 4, and the other Marriage Acts.

2nd.—Whether such a residence as that referred to is a compliance with the requirements of the authorities mentioned?

3rd.—Whether the mere taking such lodgings for the fifteen days with the power to use them, but without using them, as a residence is sufficient?

*Opinion.*

1 and 2.—I am of opinion that the words referred to in this question are satisfied by a lodging taken for fifteen days, in which the persons taking it occasionally sleep and reside. I do not think they are satisfied by the mere hiring of the lodgings, without *any* residence therein. This is, I believe, the construction which the judges are generally disposed to place upon the statute; and not long ago the late Lord Campbell expressed to me his opinion that this view was correct.

3rd.—I incline to think there must be a reasonable use of the lodgings.

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(a) So, also, where a marriage has been once solemnized by licence, or by the authority of a superintendent registrar's certificate or licence, no question concerning the residence of the parties can be raised in any suit or legal proceedings touching the validity of such marriage: 4 Geo. 4, c. 76, s. 26; 19 & 20 Vict. c. 119, s. 17.

4th.—Whether the clergy can justify requiring proof that the parties have actually dwelt as stated for the time required?

5th.—Whether the clergy can refuse to publish the banns, or to marry the parties, in either and which case?

And lastly, you are requested to advise generally as to the best means of carrying out the law in its true intent.

4th.—I think, having regard to the 7th section of the 4 Geo. 4, c. 76, that if a clergyman had good reason to doubt whether the parties had actually dwelt in the parish during the time required, he might require reasonable proof of the fact.

5th.—I think that cases might arise of grave suspicion as to whether the parties had dwelt in the parish the prescribed time; and if in such cases reasonable proof had not been furnished of their having so dwelt, that a clergyman might refuse to publish the banns, but it would require the exercise of the greatest discretion on the part of the clergyman, and generally speaking would be an unsafe course.

I do not believe that the true intent of the law was to enforce more than fifteen days' *bond fide* residence in a parish in which the parties did not usually dwell. If they usually dwell therein, fifteen days' residence before the banns are published I hold to be unnecessary. The object is to give persons legally interested in preventing the marriage a certain amount of notice that it is about to be contracted.

August 29, 1861.

ROBERT PHILLIMORE (b).

*Where the parties dwell in different parishes.] If the persons to be married dwell in different parishes or chapelries, the banns are in like manner to be published in the church or chapel belonging to the parish or chapelry wherein each of such persons shall dwell (c). This is also required by the rubric, which further pro-*

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(b) Rep. Marr. Laws Comm., App., p. 165.

(c) 4 Geo. 4, c. 76, s. 2.

vides that a certificate of the publication shall be produced from the minister of the church in which the marriage is not to be solemnized: "If the persons that are to be married dwell in divers parishes, the banns must be asked in both parishes, and the curate of the one parish shall not solemnize matrimony betwixt them, without a certificate of the banns being thrice asked from the curate of the other parish" (a).

The certificate of publication of banns must refer to banns published in a church in *England*. Where one of the parties (the bridegroom elect, for example) resides in Scotland, a certificate of the proclamation of banns there, under the hand of a Scottish minister, would not authorize a clergyman, after banns published in the parish church of the other party in England, to proceed to solemnize the marriage. As the statute which regulates marriages after banns (4 Geo. 4, c. 76) extends only to England, the Scottish minister's certificate could not be recognised under the circumstances. The same remark will apply to a certificate of banns published in Ireland.

*Places having no church or chapel wherein banns may be published.*] Every parish in which there is no parish church or chapel wherein divine service is usually solemnized every Sunday, and every extra-parochial place having no public chapel wherein banns may be lawfully published, is to be deemed to belong to any parish or chapelry next adjoining for the purposes of banns and marriages. Where banns are so published in the church or chapel of an adjoining parish or chapelry in the case of persons dwelling in different

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(a) Printed forms of certificate of banns may be obtained from the publishers of this work.

parishes, the minister publishing such banns shall in writing certify the publication thereof, in the same manner as if the persons to be married had dwelt in such adjoining parish or chapelry (a).

*Banns to be republished if marriage be not solemnized within three months.*] Whenever a marriage shall not be had within *three months* after the complete publication of banns, no minister shall proceed to the solemnization of the same until the banns shall have been re-published on three several Sundays, in the form and manner prescribed by the Act regulating banns, unless by licence duly obtained (b). It may be presumed that *calendar months* are meant.

## 2.—Of Common Licences.

A licence is a dispensation for banns, in order that the desire of the parties to have their marriage solemnized may “the more speedily obtain a due effect.” Common licences are granted in each diocese by the ordinary through his chancellor and surrogates, and by the Archbishop of Canterbury and York, through the vicars-general, for their respective provinces. About one-seventh of the whole number of marriages solemnized in every year by the Established Church take place by licences of this description.

An affidavit as to residence, absence of lawful impediment, and consent of the parent (if either party be a minor), is required to be made when the licence is applied for, but the law is defective in not constituting false swearing to obtain a licence the crime of perjury.

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(a) 4 Geo. 4, c. 76, s. 12.

(b) 4 Geo. 4, c. 76, s. 9. See similar provisions in 6 & 7 Will. 4, c. 85, s. 15, with respect to certificate or licence of sup. registrar.

The only penalty expressly imposed by law is forfeiture (to be enforced, if necessary, in Chancery) of any pecuniary benefits which the party might take under a marriage upon a licence obtained by false swearing as to consent. No further inquiry is required to be made by the surrogate; no kind of publicity is given to the application; and no interval of time is required to elapse between the application and the grant of the licence, or between the grant of the licence and the solemnization of the marriage (*a*). Under such conditions it is not surprising that licences are sometimes obtained for improper or incestuous marriages.

The cost of a common licence is not uniform in the different dioceses; it varies from about 2*l.* to 3*l.* At the Vicar-General's Office and Faculty Office, Doctors' Commons, and in the Bishop of London's Office, the expense is 2*l.* 2*s.* 6*d.* Of this charge 12*s.* 6*d.* is for stamps, viz., 2*s.* 6*d.* on the affidavit, and 10*s.* on the licence. Objections have been urged against this amount for stamps as excessive; and no doubt if it were largely reduced the Treasury would not suffer, for the number of licences granted would increase. The Marriage Laws Commissioners recommend that no stamp duty should be imposed upon any document required by law for the purpose of marriage. They also propose a certificate, which would in all cases supersede the necessity for a licence, and that the practice of granting common licences in England and Ireland should cease (*b*).

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(*a*) Rep. Marr. Laws Comm., p. vii. The Registrar of the Diocese of Salisbury states that by means of a false oath at Doctors' Commons, a man living in that diocese obtained a licence, and actually went through a form of marriage in a London church with his father's widow. *Ib.* App., p. 1.

(*b*) Rep., p. xliii.

The following is the form of an ordinary licence, as granted from the Vicar-General's Office, Doctors' Commons :—

“ARCHIBALD CAMPBELL, by Divine Providence, Archbishop of Canterbury, Primate to all England and Metropolitan, to our well-beloved in Christ,

“Richard Smith, of the parish of Sutton, in the county of Kent, a bachelor, and Ellen Hastings, of the same parish, a spinster,

Grace and health. Whereas ye are, as it is alleged, resolved to proceed to the solemnization of true and lawful matrimony, and that you greatly desire that such may be solemnized in the face of the Church : We being willing that these your honest desires may the more speedily obtain a due effect, and to the end therefore, that this marriage may be publicly and lawfully solemnised in the *Parish Church of Sutton aforesaid* by the Rector, Vicar, or Curate thereof, without the publication or proclamation of the banns of matrimony, provided there shall appear no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced in any Ecclesiastical Court to bar or hinder the proceeding of the said matrimony, according to the tenor of the said licence : And likewise that the celebration of this marriage be had and done publicly in the aforesaid church between the hours of eight and twelve in the forenoon : We for lawful causes graciously grant this our licence and faculty as well to you, the parties contracting, as to the Rector, Vicar, Curate or Minister of the aforesaid *Parish*, who is designed to solemnise the marriage between you in the manner and form above specified according to the rites of the Book of Common Prayer set forth for that purpose by the authority of Parliament (c). Given under

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(c) In the licences granted in some dioceses the following proviso is added :—“ Provided always, that if in this case there shall hereafter appear any fraud suggested to us, or truth suppressed at the time of obtaining this licence, then the licence to be void, and of no effect in law, as if the same had never been granted. And in that case we inhibit all ministers, if anything of the premises shall come to their knowledge, that they do not proceed to the celebration of the said marriage without consulting us.”



the Seal of our Vicar-General, this Tenth day of August, in the year of our Lord, 1871, and in the third year of our Translation.

"F. H. DYKE, Registrar.



"VICAR GENERAL'S OFFICE,

"Bell Yard, Doctors' Commons.

"By Stat. 4 Geo. 4, c. 76, this licence to continue in force only three months from the date hereof."

*By whom licences may be granted.]* Common licences are granted by virtue of stat. 25 Hen. 8, c. 21, by the archbishops and bishops through their officers and surrogates. The 101st canon provides that no faculty or licence for the solemnization of matrimony shall be granted by persons exercising any ecclesiastical jurisdiction, or claiming any privileges in the right of their churches, but only by such as have episcopal authority, or the commissary for faculties, vicars-general of the archbishops and bishops, *sede plena*, or *sede vacante*, the guardians of the spiritualities or ordinaries, exercising of right episcopal jurisdiction.

No surrogate is to grant any licence until he has taken an oath faithfully to execute his office according to law to the best of his knowledge, and has given security by his bond in the sum of 100*l.* to the bishop of the diocese for the due and faithful execution of the office (a).

If any persons knowingly or wilfully intermarry, without due publication of banns or licence *from a person having authority to grant the same* first had and obtained, the marriages of such persons are void (b).

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(a) 4 Geo. 4, c. 76, s. 18.

(b) 4 Geo. 4, c. 76, s. 22.

But in order to bring a marriage within this ground of nullity, it must appear that *both parties* acted knowingly and wilfully, with an intention to defeat the law (c).

A superintendent registrar has no authority to grant a licence for marriage in any church or chapel belonging to the Church of England (d). This is expressly enacted by 6 & 7 Will. 4, c. 85, s. 11, and the same statute provides (sect. 1) that nothing therein contained shall affect the right of the Archbishop of Canterbury, and his successors, and his and their proper officers, to grant special licences, or the right of any surrogate or other person having authority to grant licences for marriages.

*Application for licence and affidavit of party previously to granting it.*] The usual course out of London is for one of the parties to the intended marriage to apply personally to a surrogate, by whom the affidavit is filled up, and after the applicant is sworn, it is transmitted to the registrar of the diocese or archdeaconry. The surrogate receives by return of post the licence, together with another stamped form for the next affidavit. In towns the surrogates keep a sufficient supply of stamped affidavit forms to meet any unusual

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(c) Where a licence had been procured from a surrogate in one diocese for a marriage to be celebrated in another diocese, and a marriage was had, Dr. Lushington held that the marriage was not void, the facts not having established the guilty knowledge of *both parties*: *Dormer v. Williams*, 1 Curt. 874.

(d) In more than one instance it has happened that a marriage ceremony has been performed in a church upon a licence granted in error by a superintendent registrar, and supposed by the clergyman to be a sufficient authority for the solemnization. In such a case the proper course is to have the marriage celebrated afresh by virtue of a surrogate's licence; and the fees paid to the superintendent registrar for his licence should be returned to the party.

demand, such for instance as sometimes arises between Easter Tuesday and 30th April, when the largest number of marriages by licence occur, because weddings in Lent are discouraged by the clergy, and to be married in May is unlucky according to popular notions.

For avoiding all fraud and collusion in obtaining licences for marriage before a licence is granted, one of the parties must personally swear before the surrogate, or other person having authority to grant the same, that he or she believes there is no lawful impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced in any Ecclesiastical Court (now Court of Matrimonial Causes and Divorce) to bar or hinder the proceeding of the matrimony according to the said licence ; and that one of the parties has for 15 days immediately preceeding such licence had his or her usual place of abode within the parish or chapelry within which the marriage is to be solemnized ; and where either of the parties, not being a widower or widow, is under the age of 21 years, that the consent of the person whose consent to such marriage is required (a) has been obtained thereto ; but if there shall be no person having authority to give such consent, then upon oath to that effect by the party requiring such licence, it may be granted notwithstanding the want of any such consent (b).

The person applying for the licence is not required to give any caution or security, by bond or otherwise, before such licence is granted (c).

A false oath taken before a surrogate to obtain a

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(a) See Chap. III.

(b) 4 Geo. 4, c. 76, s. 14.

(c) *Ib.* sect. 15. By the 101st canon licences were to be granted "unto such persons only as be of good state and quality, and that upon good caution and security taken."

marriage licence will not support an indictment for perjury; but it has been held that the party taking the false oath may be indicted for a misdemeanor (*d*). If any valid marriage by licence between persons, one of whom is under 21 years, be procured by means of falsely swearing, the guilty party will forfeit all property accruing from the marriage for the benefit of the innocent party, or of the issue of the marriage, if proceedings for that purpose be instituted within one year after the solemnization of the marriage. But although the stat. 4 Geo. 4, c. 76, requires consent to the marriage of a minor by licence, yet a marriage without such consent, as already stated, is valid (*e*).

*As to the residence necessary prior to grant of licence.]* Before a licence can be granted, one of the parties to the intended marriage must have had his or her "usual place of abode" for 15 days last past within the parish or ecclesiastical district in the church or chapel of which the marriage is to be solemnized (*f*); and this is one of the facts to be sworn to in the affidavit leading to the licence. The statute does not require that the party shall have dwelt or slept in such abode without a break during the 15 days; the residence in the parish, however, although not necessarily unbroken, should be *bond fide* and continuous in the main. To engage a room without occupying it for the requisite period cannot create a legal residence, as is sometimes ignorantly supposed, nor upon such a pretext could a person swear to the fact of residence, without wilfully

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(*d*) *Rex v. Foster*, Russ. & R. C. C. 459; *R. v. Chapman*, 1 Den. C. C. 433.

(*e*) See Chap. III., *ante*.

(*f*) 4 Geo. 4, c. 76, s. 10.

perjuring himself. But to hire a lodging in which the party taking it for the most part sleeps and resides during the 15 days, or even to stay at an inn or hotel in the parish, though with occasional absences, will satisfy the statute.

In the case of seafaring persons, it is often impossible to comply with the legal requirement as to previous residence ; therefore the " usual place of abode " should not perhaps, as regards sailors, be too strictly construed, considering that the policy of the law is to encourage rather than discourage matrimony (*a*). It would seem to be highly desirable that power should be given to dispense, in proper cases, with the ordinary period of residence (*b*).

*Misdescription, or variation of names, in marriage by licence*]. It has been established by numerous judicial decisions that there is a material distinction between banns and licence, as regards any misdescription of the parties ; in the case of banns a due publication in the known names of the parties is essentially necessary, whilst in the case of licence, the object in view not being publicity, the oath of the party, as required by the canons of the church and the statute, being accepted in lieu of publication, the true name is not a matter of the same importance. Where a marriage has been had under a licence in which one of the parties has been described by a false Christian or sur-

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(*a*) If this were not so, the law of England would hardly allow boys of 14 and girls of 12 years of age to be of capacity to marry.

(*b*) Such a power being already exercised in cases of marriage by special licence, the Marriage Laws Commissioners recommend its extension to the bishops of all Episcopal churches, to officers nominated by Presbyteries, and in other cases to superintendent registrars and registrars : Rep., p. xl.

name, such marriage is valid, unless rendered otherwise by circumstances of fraud (c).

In a suit of nullity, brought by the wife against the husband, by reason of fraud and alteration of the licence, which had been granted in the name of *Martha Ewen*, and was afterwards altered by the husband to the right spelling of her name of *Ewing*, Lord *Stowell* said, "The original description was not so materially at variance with the true name as to make the licence in the terms in which it was granted invalid; and unless it was invalid before this alteration, it could not be considered as fraudulent to make the alteration. In licences the identity is the material circumstance to which the court principally looks; in banns it is the proclamation which is defective in the way of notice, if there is any material variance. In the present case it is impossible to attach any fraudulent intention on this act." It was therefore held that the validity of the licence was not affected by the alteration (d).

*Caveat against grant of licence.*] A caveat, or entry of prohibition in the registry of the bishop, alleging any legal impediment to a marriage, stops the issue of the surrogate's licence until the objection is disposed of in due course of law. The stat. 4 Geo. 4, c. 76, enacts (e) that if a caveat be entered against the grant

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(c) A man who had deserted from the army having assumed, for the purpose of concealment, another name, married by licence using the assumed name. Lord *Ellenborough* held that as he was known by that name alone for 16 weeks in the place where he was married, he had acquired the name by reputation, and that to have had a licence by any other name would have been a fraud on the Marriage Act: *R. v. Burton-on-Trent*, 3 Maule & S. 537.

(d) *Ewing v. Wheatley*, 2 Hagg. Cons. Rep. 175.

(e) Sect. 11. In most cases a caveat could hardly be entered in time to stop the grant of the licence.

of any licence for marriage, such caveat being signed by or on behalf of the person who enters the same, with his place of residence, and the ground of objection on which his caveat is founded, no licence shall issue till the caveat, or a copy thereof, be transmitted to the judge out of whose office the licence is to issue, and until the judge has certified to the registrar that he has examined the matter, and is satisfied that it ought not to obstruct the grant of the licence for the marriage, or until the caveat be withdrawn by the party who entered it.

When no caveat has been entered, and the licence has been granted, it is nevertheless justifiable on the part of the clergyman, in any case in which he suspects fraud, or the suppression of any material fact when the licence was obtained, to delay the marriage for the sake of inquiry ; indeed, according to the tenor of the licences granted in some dioceses, the clergyman is inhibited under such circumstances from proceeding to the celebration of the marriage until he has consulted the ordinary, or the chancellor of the diocese.

*Duration of licence.*] A licence continues in force only three months from the date of its being granted. Whenever a marriage is not had within three months after the grant of the licence, no minister is to proceed to the solemnization of such marriage until a new licence has been obtained, unless by banns duly published (a).

*Forging marriage licence.*] If any person shall knowingly and wilfully forge or alter, or shall utter, knowing the same to be forged or altered, any licence of marriage, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to penal

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(a) 4 Geo. 4, c. 76, s. 19.

servitude, or to be imprisoned for any term not exceeding four years, nor less than two years (b).

3.—*Of Special Licences.*

A special licence is granted in England by the Archbishop of Canterbury only, by virtue of stat. 25 Hen. 8, c. 21. It dispenses with a fixed period of residence, and authorizes marriage at any hour of the night or day, and at any place, whether consecrated or not. The recent Marriage Acts contain clauses reserving the right to grant special licences to the Archbishop of Canterbury and his proper officers (c).

The privilege of a special licence is supposed to be restricted to persons of high degree. By a regulation of Archbishop Secker, in 1759, special licences are not to be granted except to persons of the rank of peers or peeresses in their own right, their sons and daughters; dowager peeresses; privy councillors; the judges; baronets; knights; and members of Parliament; but this regulation does not bar the Archbishop from granting occasional favours beyond these specific limits. In all cases the special *fiat* of his Grace is necessary.

Special licences issue from the Faculty Office, Doctors' Commons. The same form of affidavit is required as if the licence issued merely for the dispensation of banns. The stamp on a special licence is 5*l.*, and its

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(b) Forgery Act, 24 & 25 Vict. c. 98, s. 35. See App., *post*.

(c) By 4 Geo. 4, c. 76, s. 20, it is provided that nothing thereinbefore contained shall deprive the Archbishop of Canterbury and his successors, and his and their proper officers, of the right which had hitherto been used by virtue of the stat. 25 Hen. 8, of granting special licences to marry at any convenient time and place. The stat. 6 & 7 Will. 4, c. 85, s. 1, contains a similar provision.



cost (nearly 30*l.*) renders it prohibitory to all who are not in very affluent circumstances.

Although in England the authority to grant *special licences* for marriage is limited to the Archbishop of Canterbury alone, in Ireland special licences may now be granted by the principal authorities of several religious denominations.

#### 4. *The Superintendent Registrar's Certificate.*

*When the Superintendent Registrar's certificate may be used instead of banns.]* Where by any law or canon in force before the passing of the Act 6 & 7 Will. 4, c. 85, any marriage may be solemnized after publication of banns, such marriage may be solemnized in like manner on production of the superintendent registrar's certificate. The giving of notice to the superintendent registrar and the issue of his certificate, shall be used, and stand instead of the publication of banns to all intents and purposes, where no such publication shall have taken place; and every parson, vicar, minister, or curate in England, is empowered to solemnize marriage after such notice and certificate as aforesaid, in like manner as after due publication of banns (a).

The solemnization of marriage by a clergyman of the Church of England, on production of the certificate of the superintendent registrar, is, since the Act of 19 & 20 Vict. c. 119, not obligatory; for sect. 11 of that statute enacts that "no such marriage as aforesaid" (by which is to be understood, no marriage under the 6 & 7 Will. 4, or any of the statutes

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(a) 6 & 7 Will. 4, c. 85, s. 1; 7 Will. 4 & 1 Vict. c. 22, ss. 1, 36.

amending the same) shall be solemnized in any church or chapel of the Church of England "without the consent of the minister thereof." Thus the acceptance of the certificate in lieu of banns is *optional* with the minister; but as the law has conferred on members of the Church of England the privilege (if it may be so regarded) of being married without the necessity of being "out-asked" in their parish churches, an ordeal which many persons naturally dislike, it is apprehended that few clergymen, in the present state of the law as to banns, refuse their consent to celebrate marriages on the certificate of the civil officer.

As the statute provides that "*where* by any law or canon in force," any marriage may be solemnized after banns, such marriage may be solemnized "in like manner," upon the production of the superintendent registrar's certificate, it follows that the certificate of that officer cannot lawfully be issued where neither of the parties resides in the parish or ecclesiastical district in the church of which they desire to be married. In other words, unless the parties could be legally married in the particular church after banns, the superintendent registrar is not authorized to issue his certificate for their marriage there. The certificate is to be "used and stand *instead* of the publication of banns;" that is, wherever banns would be available, the certificate would also be available and stand in the place of banns. Therefore, although the church may be within the district of the superintendent registrar, and one or both of the parties may be resident within his district, that officer has no authority to issue his certificate for marriage in a church unless one of the parties is a parishioner of the parish or district to which the church belongs.

Moreover, the issue of the certificate is subject to

the proviso that *the church* "shall be within the district of the superintendent registrar, by whom such certificate shall have been issued" (a). It is therefore not sufficient where part of the parish is within his district, and the parties are resident in such part; the church itself must be within his district. But the rule which this proviso must be taken to have established, admits of a partial exception in the case of parties who reside in *different districts*, and who have consequently given notice to *two* superintendent registrars, as required by the statute. In every such case a certificate may lawfully be issued by each of the officers to whom notice had been so given, notwithstanding that, as to one of them, the church wherein the marriage is intended to be solemnized will necessarily not answer the description of a church "within the district of the superintendent registrar," by whom the certificate shall have been issued.

*Notice to the superintendent registrar, how to be given.*] In order to obtain a certificate for marriage according to the rites of the Church of England, notice must be given in the prescribed form to the superintendent registrar in whose district the parties have dwelt not less than seven days then next preceding, or if they dwell in different districts due notice must be given to the superintendent registrar of each district. The notice may be given by either of the parties; and where two notices are necessary, the man

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(a) 7 Will. 4 & 1 Vict. c. 22, s. 36. This proviso is inconvenient, and should be repealed. It happens in several instances that the larger portion of a parish is in a superintendent registrar's district, while the church is in an adjoining district; in such cases the inhabitants of the larger portion cannot marry after notice and certificate.

may give notice in his district and the woman in hers, or either of them may give both notices.

Blank forms of notice are kept by the superintendent registrar and by every registrar of marriages, and on application being made to one of those officers he will allow the party to fill up the notice, or will himself (as an act of favour, but not of official obligation) fill it up, on the proper information being furnished to him. The notice, when filled up, must contain these particulars :

1. The *names and surnames* of the parties in full.
2. The *condition* of each, *i.e.*, whether bachelor or spinster, widower or widow.
3. The *rank, profession, or calling*.
4. The *age* of each (stated in years).
5. The *dwelling place* ; stating the number or name of the house, and the name of the street (in a town), or name of the village or place in which each of the parties is then dwelling.
6. The *length of residence* (being not less than seven days) in the district. If upwards of a month, the words "more than a month" will be sufficient.
7. The name of the *church* in which the marriage is to be solemnized, and where situate.
8. The *district and county* in which the parties respectively dwell.

*Solemn declaration.*] The party giving the notice must also make and sign a solemn declaration (at the foot of the notice) that he or she believes that there is no impediment of kindred or alliance or other lawful hindrance to the marriage ; and that the parties have for the space of *seven days* immediately preceding the giving of such notice, had their usual place of abode and residence within the district of the superintendent

registrar, to whom the notice is given ; in case one of the parties only dwells within the district, the declaration is modified accordingly. And when either of the parties, not being a widower or widow, is under the age of 21 years, the party making the declaration must further declare that the consent of the person or persons whose consent to such marriage is by law required has been given, or (as the case may be) that there is no person whose consent to such marriage is by law required (*a*).

The declaration must be signed and subscribed by the party making it in the presence of the superintendent registrar, *to whom the notice is given*, or in the presence of his deputy, or in the presence of some registrar of marriages, or of some registrar of births and deaths for the district in which the party giving such notice resides, or of the deputy of such registrar, who must attest the same by adding thereto his name, description, and place of abode. (See form of notice of marriage, 19 & 20 Vict.' c. 119, Sched. A.).

When the parties live in different districts the superintendent registrar of one district (or his deputy) is not authorised to attest the notice to be given to the superintendent registrar of the other district ; as the terms of the statute require that when not attested by a registrar or deputy registrar, the notice must contain the attestation of the superintendent registrar, to whom *the* notice is given, or that of his deputy.

*Penalty for false notice or declaration.*] Every person knowingly making a false declaration, or signing a

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(*a*) 19 & 20 Vict. c. 119, s. 2. As to persons competent to give consent, see Chap. III., *ante*.

false notice, for the purpose of procuring a marriage, will be liable to the penalties of perjury (b).

*Issuing of the certificate.*] The superintendent registrar, to whom the notice of marriage has been given, will enter the particulars in a book called the "Marriage Notice Book," and will cause the notice to be suspended in the district register office during *twenty-one* successive days next after the day of the entry of such notice. After the expiration of these 21 days, the superintendent registrar will, upon the request of the party giving such notice, issue under his hand his certificate for the marriage, provided that in the mean time no impediment be shown to his satisfaction, and that the issue of the certificate shall not have been forbidden by any person authorised in that behalf (c).

SECT. 2.—OF THE PLACE, TIME, AND MANNER OF SOLEMNIZATION OF MARRIAGES BY THE ESTABLISHED CHURCH.

1. *Churches and Chapels wherein Church of England Marriages may be solemnized.*

Every marriage by the Established Church (unless by special licence) must be celebrated in a church or chapel wherein the banns of matrimony may be lawfully published and marriages lawfully solemnized.

A church marriage is absolutely void if celebrated knowingly and wilfully in any other place than a church, or a public chapel wherein banns may be lawfully published, unless it be by special licence (d).

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(b) 19 & 20 Vict. c. 119, s. 2.

(c) *Ib.* s. 4. For form of certificate, see Sched. B of the Act, Appendix.

(d) 4 Geo. 4, c. 76, s. 22.

The statute, 4 Geo. 4, c. 76, enacts that banns shall be published in the parish church or in some public chapel, in which banns might then *or might thereafter be lawfully published*; and that in all cases where banns shall have been published the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever (a). Although a marriage after banns in a church, other than that in which the banns have been published, is not expressly declared to be void, grave doubts must necessarily arise as to the validity of such a marriage (b).

Difficulties have from time to time arisen as to the churches or chapels in which banns may be lawfully published and marriages solemnized, and various Acts of Parliament have been passed declaring marriages *already* solemnized at the time of the passing of the remedial statutes, valid in law, although legal authority to publish banns in the churches and chapels in question may have been wanting. Fourteen special Acts have been passed for the confirmation of marriages solemnized in particular places in England; as, for example, where a church has been rebuilt, and not re-consecrated; or where, before the completion of all the requisite formalities, the incumbent has erroneously believed himself to be entitled to publish banns and solemnize marriages in the church of a new parish (c).

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(a) 4 Geo. 4, c. 76, s. 2.

(b) By error marriages after banns have sometimes been celebrated in churches in which the banns have not been published, as where a church has been under repair, and after banns published in a licensed room temporarily used for divine service, the parties have been married in the church of the parish, or of an adjoining parish.

(c) See a list of these Acts confirming marriages in the Appendix, *post*.

*Marriages in the churches of district parishes or ecclesiastical districts.]* Under the Acts for building new churches, and other statutes, powers are given for the division of ancient parishes for the purpose of forming new and separate parishes for ecclesiastical purposes. The first of these statutes, the 58 Geo. 3, c. 45, enacts that the commissioners for building new churches may, with the consents of the bishop and the patron of the mother church, submit to the King in Council, a scheme stating the proposed bounds of such division, and the proportion of tithes, endowments, and profits applicable thereto; and if his Majesty in Council shall direct such division to be made, such order shall be valid for effecting such division; provided that it shall not take complete effect till after the death, resignation, or avoidance of the existing incumbent, when the laws relating to banns, marriages, and other offices shall apply to the churches and chapels thereof in like manner as if they had been ancient separate parishes and parish churches. Various subsequent Acts have provided for the formation of districts by the Church Building Commissioners and the Ecclesiastical Commissioners, to be new parishes (*d*).

In the churches of the numerous district parishes, district chapelries, consolidated chapelry districts (formed out of portions of two or more parishes or districts), and other ecclesiastical districts, severed from ancient parishes, and erected into separate parishes "for all spiritual purposes" or "for all ecclesiastical purposes," under the statutes commonly known as the Church Building Acts, sooner or later after consecration banns may be published and marriages

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(*d*) The powers of the Church Building Commissioners were transferred to the Ecclesiastical Commissioners by 19 & 20 Vict. c. 55, and 29 & 30 Vict. c. 111.



solemnized. Where marriages may not be celebrated in the church of the separated parish until after the avoidance of the then incumbent of the mother church, the bishop is to certify the avoidance, and his certificate is to be conclusive evidence that marriages may by law be solemnized therein.

Under the Act of 6 & 7 Vict. c. 37, when a church is consecrated for a new district or "Peel Parish," defined in a scheme prepared by the Ecclesiastical Commissioners and approved by Her Majesty in Council, and the Order in Council has been published in the *London Gazette*, the incumbent becomes *ipso facto* entitled to publish banns and solemnize marriages.

In every case in which a district has been or shall be assigned to any church or chapel, under the provisions of the Act of 3 & 4 Vict. c. 60, the Ecclesiastical Commissioners or the Bishop may decide as to whether banns may be published and marriages solemnized in such church or chapel, or not (*a*).

It would be a profitless task, however, to cite the provisions of the various Church Building Acts relating to the constitution of new parishes; these acts form a tangled web of legislation which few persons care to unravel. When a new parish or district is formed, the course to be taken by the incumbent in reference to marriages is simple. He should act with caution, abstaining from publishing banns and solemnizing marriages until he has ascertained from the registrar of the diocese that, all the formalities being complete, he may lawfully do so. Application should then be

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(*a*) 7 & 8 Vict. c. 56, s. 1. The proceedings in cases where marriages are permitted are defined by sect. 2; and by sect. 3 the validity of marriages already had in certain chapels with districts assigned to them is not to be questioned.

made to the Registrar General, Somerset House, London, for Marriage Register Books, several days before they are wanted for use. As soon as the Registrar General is satisfied (after communication, where necessary, with the Diocesan Registrar) that the church is one in which marriages may be lawfully solemnized, he will cause the Register Books to be sent to the incumbent. By the precaution used at Somerset House before Register Books are furnished, the irregular celebration of marriages in unauthorized churches, or before the requisite forms have been completed, is often prevented.

*As to parties resident in district parishes.]* For all the purposes connected with publishing banns and solemnizing marriages, the churches of district parishes and ecclesiastical districts, constituted as already described, are to be considered as the parish churches of the parties resident therein. They have not the option, as some have supposed, to be married either in the church of the district parish or in that of the mother or original parish, as they may see fit; nor has the incumbent of the mother parish authority to publish the banns or to solemnize the marriage, unless one of the parties resides within the district still attached to the mother church.

*Power of bishop to license chapels for solemnizing marriages.]* Under the Act of 4 Geo. 4, c. 76, the bishop of the diocese, with the consent of the patron and the incumbent of the church of the parish in which any public chapel having a chapelry thereunto annexed may be situated, may authorize the publication of banns and the solemnization of marriages in such chapel for persons residing within such chapelry;

a notice is to be placed in the chapel that banns may be published and marriages solemnized therein ; and the provisions as to marriage registers are extended to every such chapel in the same manner as if it were a parish church (a).

By the Marriage Act, 6 & 7 Will. 4, c. 85, power is given to the bishop to license chapels for the solemnization of marriages, in order to relieve from inconvenience the inhabitants of populous places remote from the parish church or from any church in which marriages may be celebrated. With the consent of the patron and incumbent respectively of the church of the parish or district in which may be situated :— (1) any public chapel with or without a chapelry thereunto annexed, or (2) any chapel duly licensed for divine service according to the rites of the Church of England, or (3) any chapel the minister whereof is duly licensed to officiate therein,—or without such consent after two months' notice in writing given by the registrar of the diocese to such patron and incumbent respectively, the bishop may authorize, by a licence under his hand and seal, the solemnization of marriages in any such chapel for persons residing in a district specified in the licence ; and thenceforth and until the licence be revoked, marriages solemnized in such chapel shall be as valid as if the same had been solemnized in the parish church (b). Provision is made in case of the refusal of consent by the patron or incumbent, and for an appeal to the archbishop of the province against such licence when granted ; also for the appropriation of fees on marriages performed in

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(a) Sects. 3, 4 and 5.

(b) By sect. 32 the licence is to be exempt from stamp duty, but that exemption would appear to be repealed by "The Stamp Act, 1870," which requires a 10s. stamp.

such chapels. All regulations relative to registers of marriages and copies of registers are to be the same as in parish churches ; and in case the licence is revoked, the registers are to be forthwith transmitted to the incumbent of the parish church, who is to transmit the duplicate of any register book, of which the duplicate has not been already transmitted, to the superintendent registrar of the district (c).

*Option to parties to be married at the parish church.]* In this particular case, notwithstanding any such licence to solemnize marriages in any such chapel, the parties may, if they think fit, have their marriage solemnized in the parish church, or in any chapel in which theretofore the marriage of such parties or either of them might have been legally solemnized (d).

*Where the parties reside in different ecclesiastical districts.]* The bishop's licence extends to and authorizes marriages in any such chapel between parties *one or both of whom* is or are resident within the district specified in the licence ; but where parties intending to be married after banns, reside within different ecclesiastical districts, the banns for such marriage are to be published as well in the church or chapel wherein such marriage is intended to be solemnized as in the chapel licensed under the provisions of the Act 6 & 7 Will. 4, c. 85, for the other district within which one of the parties is resident, and if there be no such chapel, then in the church or chapel in which the banns of such last-mentioned party might be legally published if the said act had not been passed (e).

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(c) See 6 & 7 Will. 4, c. 85, ss. 26 to 33.

(d) *Ib.* s. 31

(e) 7 Will. 4 & 1 Vict. c. 22, s. 34.

Therefore, where either of the parties resides within the district of a chapel licensed under the act, the banns may be published in such chapel whether the marriage is intended to be solemnized therein or not.

*Provisions where the parish church is pulled down or under repair.*] The stat. 4 Geo. 4, c. 76, enacts (s. 13) that if the church of any parish or chapel of any chapelry wherein marriages have been usually solemnized, be taken down in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church ; and where no such place shall be so licensed, then, during such period as aforesaid, the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed (a).

The above provisions of the Act of 4 Geo. 4, were defective in not expressly authorising the *solemnization* of marriages in the place so licensed by the bishop, and in some other particulars. By 5 Geo. 4, c. 32, therefore, it was enacted (s. 1), with respect to marriages which had been theretofore<sup>1</sup> solemnized, or which should be *thereafter* solemnized, in any place so licensed for the performance of divine service during the repair or rebuilding of any church or chapel wherein marriages had been usually solemnized,—or if

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(a) Marriages *theretofore* solemnized within the parishes or chapelries in other places than the churches or chapels during their rebuilding or repair are confirmed by the same section.

no such place had been licensed, then in an adjoining church or chapel wherein banns were usually proclaimed, whether by banns published in such church or chapel, or *by licence* lawfully granted, such marriages should not have their validity questioned on account of their having been so solemnized; and that the ministers who had solemnized the same, should not be liable to any ecclesiastical censure, or to any other proceeding whatever. The Act further provides (s. 2), that *licences* duly granted for marriages in a parish church or chapel, shall be deemed to be licences for marriages in any place so licensed by the bishop for divine service during the repair or rebuilding of such church or chapel, or if no such place shall be so licensed, then in an adjoining church or chapel wherein marriages have been usually solemnized; and (sect. 3) banns published and marriages solemnized in any place licensed as aforesaid, during the repair or rebuilding of the church or chapel, shall be considered as published and solemnized in such parish church or chapel, and shall be registered accordingly.

To remove doubts as to the validity of marriages in cases where, during the repair or rebuilding of churches or chapels, the ministers had published the banns in the places temporarily used for divine service, but had solemnized the marriages in adjoining churches, and in other cases where the ministers had published banns and solemnized marriages in places not licensed specially for divine service during such repair or rebuilding, the statute 11 Geo. 4 & 1 Will. 4, c. 18, enacts (sect. 1) that all marriages the banns whereof had been published in any place used for the performance of divine service, within the limits of any parish or chapelry, during the repairs or rebuilding of the church or chapel thereof, whether solemnized in the place so used or in

some adjoining church or chapel, shall not have their validity questioned on account of having been so solemnized. This statute further provides (sect. 2) that the bishop may authorize banns and marriages in any *consecrated chapel* until the parish church shall be reopened for divine service, and may order that such chapel shall, for the purposes of banns and marriages, be deemed and taken to be the church of the parish, subject to a proviso as to fees (a).

From the foregoing provisions it will be seen that where a parish church or chapel, in which banns may be published, is pulled down for rebuilding, or shut up for repairs, one of three courses may be followed :

(1.) Banns may be published and marriages solemnized in the "place" (usually a schoolroom) licensed by the bishop for the performance of divine service during the repair or rebuilding of the church ;

(2.) A faculty may be obtained from the bishop to authorize banns and marriages in some "consecrated chapel" (such as a chapel of ease) within the parish ; or

(3.) When no such "place" or chapel has been licensed by the bishop, the inhabitants may resort to the church or chapel of an adjoining parish or chapelry for the purposes of banns and marriages.

The marriages of persons belonging to a parish, the church of which is under repair, celebrated in the church of an adjoining parish, or in a licensed room or chapel, should be entered in the registers of the church under repair.

*Lists of chapels to be sent by diocesan registrar to*

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(a) The statute also confirms marriages in certain district churches.

*Registrar General.*] Within 15 days after the 1st January in each year the registrar of every diocese is to make out and send to the Registrar General a list of all chapels belonging to the Church of England within that diocese wherein marriages may lawfully be solemnized, distinguishing such as have a parish, chapelry, or other recognized district, and which are chapels licensed by the bishop under 6 & 7 Will. 4, c. 85; and the Registrar General is every year to cause to be printed a list of such chapels, and also of all places of worship registered for marriages, in each superintendent registrar's district, adding the names and addresses of the registration officers of each district. A copy of this list is to be sent to every superintendent registrar and registrar (b).

2. *Of the Time and manner of Solemnization of  
Marriages by the Established Church.*

*Time of solemnization.*] Marriages in churches must be solemnized *between the hours of eight and twelve in the forenoon*, commonly called "the canonical hours," because the restriction as to hours formerly depended on the authority of the canon (c). The contravention of this rule is now felony by statute 4 Geo. 4, c. 76, sect. 21, which enacts that if any person shall solemnize matrimony in any other place than a church or public chapel wherein banns may be lawfully published, or

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(b) 6 & 7 Will. 4, c. 85, s. 34. The list in question is issued under the title "Official List of the Registrar General," early in each year; it contains also instructions, copies of circulars, and other information for the guidance of the officers.

(c) The injunction is contained in the 102nd canon of 1603; it was first introduced by the Constitutions of 1597, and not being part of the ancient canon law was obligatory only upon the clergy.



*at any other time than between the hours of eight and twelve in the forenoon, unless by special licence from the Archbishop of Canterbury, shall be adjudged to be guilty of felony (a).*

A marriage celebrated outside the canonical hours would not, on that account, be invalid; and if the interchange or declaration of matrimonial consent, "I, N., take thee, M., &c.," be completed before twelve o'clock, the non-completion of the rest of the office before that hour, should not time permit, would probably be of little importance.

The Marriage Laws Commissioners recommend the discontinuance of the requirement by the State of solemnization within certain hours. While in England, and in the late Established Church in Ireland, the legal hours are from 8 to 12 A.M., any other Protestant marriages in Ireland may take place between 8 A.M. and 2 P.M., and Roman Catholic marriages are subject to no restriction of time. In Scotland there is no restriction of time or place. Although they do not suggest that any clergyman of the Established or any other Church, solemnizing marriage, should be relieved by law from such obligations as may be imposed upon him with respect either to time or place by the law and discipline of his own Church, they consider that these points should for the future be remitted to that law and discipline, and should be left open and free, so far as State legislation is concerned (b).

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(a) Marriages in registered buildings and in district register offices must also take place between 8 and 12 A.M. 6 & 7 Will. 4, c. 85, ss. 20, 21.

(b) Rep. p. xxxvi. On the other hand, good reasons may be urged for marrying in the morning. "The Church orders that all marriages shall be made in the daytime; for those who intend honourably and honestly need not fly the light; and since the parties are most serious in the morning, it is appointed that it

By the 62nd canon, marriages are ordered to be performed "in time of divine service." Wheatly observes that "the practice is now almost, by universal consent, laid aside and discontinued, and the rubric only mentions 'the day and time appointed.'" Archdeacon Sharp traces the neglect of this canon to the example of the bishops, and the granting of licences "to persons of rank and figure whose shyness and delicacy in this nuptial ceremony, have been met with a correspondent tenderness. And if this might be done for persons of rank and fortune, why not for other persons" (c). And hence followed general disregard to the rule.

In England, marriage may now be celebrated at all seasons of the year and on every day; although there are times set apart for extraordinary devotions, during which marriages are discountenanced by the Church (d).

*Manner of Solemnization.*—Clergymen solemnizing marriages after banns or by ordinary licence, must observe the rules prescribed by the rubric in the Book of Common Prayer (e). Where a special licence has been

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shall be celebrated between the hours of 8 and 12; and of old it was required the bride and bridegroom should be fasting when they made this religious vow in God's presence, and by that means they were safe from being made incapable by drink of making a wise and voluntary choice in this great and weighty affair."—*Dean Comber*.

(c) *Sharp*, 12th charge.

(d) From Advent Sunday till a week after Epiphany, from Septuagesima Sunday till a week after Easter, and from Ascension Day to Trinity Sunday, are by some old canons reckoned times prohibited for marriage. Before the Reformation, and until the time of the Commonwealth, Sunday was the favourite day for marriages. The upper and middle classes now avoid marrying on a Sunday, and all classes avoid Friday as a day for marriage.

(e) 4 Geo. 4, c. 76, s. 2.

granted by the Archbishop of Canterbury, for the solemnization of a marriage at any convenient time and place—as in a private house—it operates as a dispensation for non-compliance with the rubric in some particulars.

The rubric directs that “at the day and time appointed for solemnization of matrimony, the persons to be married shall come *into the body of the church* with their friends and neighbours: and *there* standing together, the man on the right hand and the woman on the left,” the ceremony shall commence.

The custom formerly was for the couple who were to be married to be placed at the church porch, where the priest was used to join their hands and to perform the greatest part of the matrimonial office. But at the Reformation, the rubric was altered and the whole office ordered to be performed within the church, where the congregation might afford more witnesses of the fact. Bishop Wren expressed the correct usage in ordering that after morning prayer “the marriage be begun in the body of the Church, and finished at the table.” The present rubric is in accordance with this direction, the removal from the body of the church being in the time of saying the psalm, which is to be “going to the Lord’s table”; but the rubric is now generally disregarded, and the wedding party assembles in the chancel near the communion rails, the minister standing within the rails. The man stands on the right hand, because the right hand is the most honourable place, which is therefore both by the Latin and Greek and all Christian churches, assigned to the man as being head of the wife (a).

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(a) *Wheatly*. The Jews, however, place the woman on the right hand of her husband in allusion to the expression in

As the ceremony proceeds, there is first the preparation by instructing the whole congregation as to the divine origin of matrimony and the causes for which matrimony was ordained; then the strict charge to the parties themselves to declare any known impediments. And if any person present allege and declare any impediment upon sufficient grounds, the duty of the minister to stop the proceedings, is clearly laid down in the rubric (b).

No impediment being alleged, the next thing is "the mutual stipulation," and then they give their troth to each other, "the minister receiving the woman at her father's or friend's hands" (c). The mutual stipulation "*I M. take thee N.*" &c., which each is to repeat with his or her own lips, is the most essential part of the marriage ceremony; as a form of contract it is explicit and full, and what adds to its excellence is its plainness and simplicity (d).

When the ring is delivered, the husband declares

Psalm 45: "At thy right hand did stand the queen in a vesture of gold," &c.

(b) "At which day of marriage if any man do allege and declare any impediment why they may not be coupled together in matrimony by God's law, or the laws of this realm, and will be bound, and sufficient sureties with him, to the parties, . . . then the solemnization must be deferred until such time as the truth be tried."

(c) The reason assigned for the father giving away his daughter is that in ancient times the authority of a father was almost despotic; the children were considered as his property. When any other person gives her away he is supposed to be deputed by the father, or to act with his permission. At present the ceremony shows the father's consent, and that the authority which he before possessed he now resigns to the husband.—*Shepherd's Service of the Church of England.*

(d) The man says, "and thereto I plight thee my troth;" the woman says, "I give thee my troth"; that is, for the performance of all that has been said they, each of them, lay their faith or truth to pledge.—*Wheatly.*

the meaning of the token "with this ring I thee wed," that is, this is a pledge of that covenant of matrimony which I now make with thee. He then shows the particular rights accruing to her thereby, namely, to share in all the honours belonging to his person, which is the meaning of those words "with my body I thee worship;" (a) and to have an interest in his personal estate, signified in that phrase "with all my worldly goods I thee endow." In the ancient usage of laying down with the ring a sum of money on the book, part of it (namely, the dues of the priest and clerk) was the man's oblation to God, and all the rest was by the priest delivered to the wife. The place of the ring "on the fourth finger of the woman's left hand," is said to have had its origin in a belief of the ancients that there was a vein there which came directly from the heart; and being a finger least used the ring would be least subject to be worn out. The other well-known incidents of the office of matrimony—the priest's ratifying the covenant by praying for a blessing on it, publishing the validity of it, and pronouncing the benediction over the parties, with the conclusion of the ceremony by praises, prayers, and instruction, call for no special comment in this place.

*Presence of witnesses.*—In order to preserve the evidence of marriages, and to facilitate the proof thereof, the Marriage Acts require that the solemnization shall

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(a) That no man quarrel with this harmless phrase let him take notice that to worship here signifies to make worshipful or honorable, as you may see, 1 Sam. ii. 30. For where our last translation reads it, "him that honours me, I will honour," in the old translation which our Common Prayer Book uses it is, "him that worships me I will worship"; that is, I will make worshipful, &c.—*Bp. Sparrow*; see also the works of *Dean Comber*, *Hooker*, and *Wheatly* on the Church Service.

take place in the presence of and be attested by two or more credible witnesses. The witnesses should, whenever practicable, be the relatives or friends of the parties. For the clerk or pew-opener to act frequently as attesting witnesses is objectionable, especially where many marriages are celebrated, because these persons will seldom be able to testify afterwards to the identity of the persons married from personal knowledge or recollection. Children should not be allowed to act as witnesses, but while the law permits girls of twelve years of age to contract matrimony, a clergyman would not consider it right to object to young persons as witnesses.

*Registration of the marriage.*] Every clergyman of the Church of England is required, immediately after the office of matrimony, to register in duplicate in Marriage Register books, the particulars relating to the marriage, in the form prescribed by stat. 6 & 7 Will. 4, c. 86. The incidents connected with the registration of marriages, correction of errors, certified copies and extracts, &c., will be treated in a separate chapter (b).

*Consent of minister necessary to marry parties producing superintendent registrar's certificate.*] The enactment that the giving of notice to the superintendent registrar, and the issue of his certificate should be used and stand instead of banns, and further that every officiating minister "shall solemnize marriage after such notice and certificate as aforesaid, in like manner as after due publication of banns" (c),

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(b) See Chap. VI., *post*.

(c) 7 Will. 4 & 1 Vict. c. 22, s. 36.

imposed on the clergy the obligation of solemnizing marriages on production of the superintendent registrar's certificate. This obligation, however, no longer exists, and it is now entirely optional with the minister of the church whether he will solemnize marriage on production of the certificate or not. By s. 11 of 19 & 20 Vict. c. 119, it is provided that "no such marriage as aforesaid (a) shall be solemnized in any church or chapel of the United Church of England and Ireland without the consent of the minister thereof, nor in such latter case by any other than a duly qualified clergyman of the said United Church, or with any other forms or ceremonies than those of the said United Church, any statute or statutes to the contrary notwithstanding."

Therefore as marriages cannot lawfully take place in churches on the authority of the superintendent registrar's certificate without the consent of the minister, it is the duty of that officer to call attention to the fact, and to remind all persons that it behoves them, before incurring the expense of giving the notice, to ascertain that the requisite consent will be given. Unless this precaution is taken vexatious disappointment may possibly arise to the parties at the time fixed for the wedding (b).

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(a) That is, under the statute of 6 & 7 Will. 4, c. 85, and the Acts amending the same.

(b) This matter appears to be on an unsatisfactory footing. If there is any hardship in requiring a clergyman to marry parties on the certificate of a civil officer, the latter should not be permitted to have any part or authority in reference to church marriages. But if the practice established in 1837 is free from objection, why should marriage on the production of the certificate be permissive only? The certificates are sought in preference to banns by church people, and the matter in no wise concerns Dissenters. Whether the church or civil officer shall

*Of the religious ceremony super-added to marriage in a district register office.]* Persons who have been married in the district register office may, at any time thereafter, if so minded, add the religious ceremony ordained by the Church of England. It is competent for them to present themselves for that purpose to a clergyman, having given notice to him of their intention so to do ; and such clergyman, upon the production of a certificate of their marriage at the register office, and upon the payment of the customary fees (if any) may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself, or by some minister nominated by him, read or celebrate the marriage service. But nothing in the reading or celebration of such service is to be held to supersede or invalidate any marriage so previously contracted at the register office, nor is any such reading or celebration to be entered as a marriage among the marriages in the parish register (c).

This enactment, it will be observed, authorizes the addition of a religious ceremony only where the previous marriage has been contracted in the district register office, and consequently without a religious service, the use of which at marriages there contracted the Act expressly prohibits. Persons who have been married in the register office may at any time thereafter, if so disposed, apply to a clergyman, if they be members of the Church of England, to superadd to the previous civil marriage the service of matrimony of

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have the small fee involved is not worth consideration ; and the practical result is to give needless trouble to clergymen (who, doubtless, have little desire to exercise a discretion upon the subject) as well as to the parties themselves.

(c) 19 & 20 Vict. c. 119, s. 12.



the Church, and it will be competent for him to do so, if he think proper, without licence or publication of banns, or the production of a superintendent-registrar's certificate. But, except in the particular case provided for, any clergyman who *without licence, banns, or certificate*, should knowingly perform the marriage ceremony between persons who had already been lawfully married in any other place than a register office, would infringe the law, and render himself liable to a prosecution for felony under the Act of 52 Geo. 3, c. 76.

*Re-marriages.*] A reference may here be appropriately made to those cases in which a re-marriage is not only allowable and proper, but does, in fact, occasionally take place between the parties to a previous marriage. This usually occurs in one or other of the following cases :

1. After a marriage between persons of different religious persuasions, as between a Protestant and a Roman Catholic.
2. After a marriage in Scotland, or in some foreign country, between persons whose domicile is in England.
3. After a marriage, the validity of which has been rendered doubtful through some informality in the proceedings connected with it.

In the case first mentioned, namely, that of different religious persuasions, the course usually adopted by the parties is to have the marriage ceremony performed *twice on the same day*, generally according to the forms of their respective denominations. But it is absolutely necessary that the parties should be provided with a separate authority for each ceremony ; for if any person should solemnize, without licence or certificate duly issued, any marriage in a registered building, or in the district register office, either

before or after its celebration in a church or chapel of the Church of England, such person would be liable to a prosecution for felony under s. 39 of 6 & 7 Will. 4, c. 85 ; and, on the other hand, any clergyman of the Church of England who either before or after the celebration of any mixed or other marriage in a registered building, should solemnize matrimony between the parties without due publication of banns, or without licence duly granted, or superintendent registrar's certificate, would be guilty of felony under 4 Geo. 4, c. 76.

With respect to the cases in which parties, who already sustain the relationship of husband and wife, desire for their own satisfaction, or that of their friends, to have their marriage solemnized afresh, it is to be observed that their description should have reference to the previous marriage : thus the woman should be described by her married as well as maiden surname, *e.g.*, "*Martha Smith formerly Martha Green, spinster,*" and in the column for "condition" the entry should be "*previously married, as alleged, on the — day of —, 18—, at —*" (as the case may be).

## CHAPTER V.

### OF MARRIAGES OTHER THAN THOSE BY THE ESTABLISHED CHURCH.

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SECT. 1.—OF THE SUPERINTENDENT REGISTRAR, THE  
REGISTRAR OF MARRIAGES, AND THE DISTRICT  
REGISTER OFFICE.

*The superintendent registrar.*] In relation to the preliminary proceedings connected with marriages not according to the rites of the Church of England, important and responsible duties devolve upon the superintendent registrar, who is subject to the regula-

tions of the Registrar General and holds office during his pleasure. On the first establishment of the system of civil registration, the clerk to the board of guardians in any union might, if he possessed the prescribed qualifications, accept the office of superintendent registrar; but in the event of his refusal or disqualification to act in that capacity the guardians were required to appoint a qualified person to fill the office; and in every case of subsequent vacancy of the office the guardians are required to fill up the vacancy forthwith (a).

In temporary districts, which consist chiefly of parishes not formed into unions but incorporated for the relief of the poor under local acts, the superintendent registrar is appointed by the Registrar General (b), subject, however, to the office being vacated in the event of the subsequent formation of a union (c); but if the limits of the district remain unaltered, the superintendent registrar is not to vacate his office (d).

Where, on the formation of a union, the clerk to the guardians has not accepted the office of superintendent registrar, or is disqualified, and after being required by the Registrar General, the guardians refuse or neglect during 14 days to appoint a properly qualified person,—and in every case of vacancy of the office in which

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(a) 6 & 7 Wm. 4, c. 86, s. 7. The right of the clerk to the guardians to “accept” the office belonged only to the person who was clerk at the time of the first formation of the district. The clerk cannot, after the occurrence of a vacancy, claim to be superintendent registrar; in that case the guardians must fill up the vacancy by appointing a person properly qualified.—*Reg. v. Acazon*, Q.B., *Trinity T.*, 1862.

(b) 6 & 7 Wm. 4, c. 86, s. 10.

(c) *Ib.* s. 11. The district of Liverpool is an exception; by the Act 5 & 6 Vict. c. 88, the “select vestry” are to appoint the superintendent registrar, and registrars of births and deaths.

(d) 31 & 32 Vict. c. 122, s. 5.

the guardians refuse or neglect during 14 days after such vacancy to appoint a properly qualified person, the appointment lapses to the Registrar General (a). This enactment is intended to obviate the inconvenience which might arise to the public from the office being vacant for a longer period. Where two or more unions or parishes are united to form one superintendent registrar's district, the Registrar General is to declare by which board of guardians the superintendent registrar shall thenceforward be appointed ; and the superintendent registrar of the union for which such board is established, is to be the sole superintendent registrar of the united district (b).

The principal duties of the superintendent registrar in connection with marriages consist in receiving and entering notices, issuing certificates, granting licences, deciding on caveats, being present at marriages solemnized in the register office, and procuring the registry of buildings for the solemnization of marriages therein. The reception and care of all marriage register books when filled devolve upon him ; he receives also, and transmits quarterly to the Registrar General, certified copies of all entries made in the registers. The appointment of registrars of marriages is made by him, subject to the approval of the Registrar General. For the various duties performed by the superintendent registrar, he is remunerated entirely by fees (c).

The superintendent registrar of births and deaths of every union, parish, or place is, in right of his office,

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(a) 7 Wm. 4 & 1 Vict. c. 22, s. 14.

(b) *Ib.* s. 10. See also provisions in case the Registrar General shall divide any superintendent registrar's district into two or more districts, sect. 11.

(c) The fees are paid partly by the State and partly by the public.

superintendent registrar of marriages within such union, parish, or place, which is to be deemed the *district* of such superintendent registrar (*d*).

Every superintendent registrar before he can grant any licence for marriage, must give security by his bond, in the sum of 100*l.*, to the Registrar General,\* for the due and faithful execution of his office (*e*).

Superintendent registrars knowingly and wilfully issuing certificates or licences for marriage before the expiration of the required term of notice, or after three months from the date of the entry of the notice, or when the issue of the certificate has been forbidden, or solemnizing in the register office any marriage declared by the Act to be null and void, are guilty of felony (*f*). It will be observed that while the statute recognises these offences as felonies, they must have been “knowingly and wilfully” committed; nevertheless it is scarcely possible for the superintendent registrar to be too circumspect in these matters, since any irregularity may not only be of serious consequence to himself, but may raise doubts as to the validity of a marriage.

*Appointment of deputy superintendent registrar.]*

Every superintendent registrar is required to appoint a fit person to act as his deputy in case of his illness or absence, and such person, who must possess generally the same qualifications as those prescribed for superintendent registrars, must be approved by the

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(*d*) 6 & 7 Wm. 4, c. 85, s. 3.

(*e*) *Ib.* s. 11. The form of the bond is printed in the Registrar General's regulations for the duties of superintendent registrars; it must bear a 2*s.* 6*d.* stamp, and be duly signed by the obligee and an attesting witness.

(*f*) *Ib.* s. 40.

Registrar General (a). Such deputy whilst so acting has all the powers and duties, and is subject to all the provisions and penalties declared by the statutes concerning superintendent registrars; and every superintendent registrar is civilly responsible for the acts and omissions of his deputy (b). The superintendent registrar may remove his deputy at pleasure.

Acts involving the formal exercise of authority, such as issuing certificates for marriage, granting licences, deciding on caveats, &c., can be done by the deputy only in the case of the illness or absence of the principal; but he will at all times be at liberty to render assistance by other means not involving any such formal exercise of authority, and also to attest marriage notices. The law makes no provision for payment to the deputy; therefore his remuneration will be derived from the emoluments of the superintendent registrar, and will be the result of an arrangement between them (c). In the event of the death of the superintendent registrar, the deputy will act in that capacity until the vacancy is filled up. It is not necessary for a deputy superintendent registrar to give security by his bond to the Registrar General, for the due execution of his office, provided his principal has done so; but while acting as superintendent registrar in case of the death of the principal, it would appear that he is not authorized to grant any licence until he shall have given the security required by sect. 11 of 6 & 7 Will. 4, c. 11.

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(a) It is essential that he should be of full age, that he should be a layman, and that he should not be in the exercise of any profession or business incompatible with the duties of the office. Forms of appointment may be obtained from the General Register Office.

(b) 7 Wm. 4 & 1 Vict. c. 22, s. 16.

(c) Regulations for duties of superintendent registrars.

*Registrars of marriages, appointment of.]* The Registrar General, and the superintendent registrars, are empowered to appoint registrars of marriages. In every district at least one registrar of marriages, with the qualifications prescribed by the Registrar General(*d*), must be appointed by the superintendent registrar, but that officer must not make fresh appointments, unless in the event of a vacancy, without having first obtained the sanction of the Registrar General; and every such registrar of marriages holds his office during the pleasure of the superintendent registrar by whom he was appointed, or of the Registrar General(*e*).

The Registrar General is authorized to fix from time to time the number of registrars of marriages to be appointed by any superintendent registrar, who has no power to appoint more than the number so fixed(*f*).

. Section 15 of the Act of 19 & 20 Vict. c. 119 confers upon the Registrar General an authority in common with superintendent registrars with regard to the appointment of these officers. It provides that the Registrar General shall have power from time to time to appoint, by writing under his hand, such person or persons as he may think fit, possessing the prescribed qualifications, to be a registrar or registrars of marriages within the district of any superintendent registrar;

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(*d*) The qualifications necessary are these :—He must reside within the district for which he is appointed to act; he must not hold a similar office, or that of superintendent registrar in any other district; he must not be an uncertificated bankrupt, or have taken within 12 months the benefit of any Act for the relief of insolvent debtors. (General Rule, Jan., 1837.)

(*e*) 6 & 7 Wm. 4, c. 85, s. 7. The *successor* in office of a superintendent registrar by whom a registrar of marriages was appointed cannot remove the latter; he is, in that case, removable only by the Registrar General. Registrars appointed by the Registrar General are also removable by him alone.

(*f*) 7 Will. 4 & 1 Vict. c. 22, s. 22.



and further, that every appointment of a registrar of marriages thereafter made by any superintendent registrar shall be subject to the approval of the Registrar General (a). Every such appointment by a superintendent registrar must be made out in duplicate, according to the form prescribed, and must be sent to the Registrar General with a return of particulars (as to name, profession or calling, and qualifications) for his approval.

The Registrar General may, therefore, limit the number of marriage registrars where there are too many, and increase the number where it is insufficient.

*Duties of the registrar of marriages.*] The principal duties of this officer are to act as "attesting witness" and to assist persons in filling up notices of marriage when applied to for the purpose; to attend all marriages at which his presence is required, and of which he has received notice at a reasonable time beforehand from the parties; to examine carefully the certificate (or certificates, if the parties dwell in different districts) or the licence to see that it is in every respect regular; to take care that in some part of the ceremony the declaration and words of contract prescribed by the statute are said by each party in his presence and in the presence of the witnesses; to register, in the manner set forth in his instructions, each marriage as soon as it is solemnized; and to deliver quarterly to the superintendent registrar of his district a certified copy of all the entries made by him in the preceding quarter. He is also to allow searches in the register book in his keeping, and to furnish

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(a) So much of sect. 17 of 6 & 7 Will. 4, c. 85, as rendered these appointments subject to the approval of a board of guardians is therefore repealed. Forms for the appointment of marriage registrars are furnished by the Registrar General.

certificates of any marriages therein entered, as may be required (b).

The registrar of marriages is entitled to the following fees :—For every marriage solemnized in his presence at which his attendance is required, 10s. if the marriage is by licence, and 5s. if the marriage is by certificate (without licence), to be paid by the parties married ; for every search in the register book in his keeping 1s. if the search extend over a period of not more than one year, and if for more, 6d. for every additional year ; for every certificate of marriage given to the public, 2s. 6d. He must not “ exact any remuneration as a condition of the discharge of any part of his functions as registrar ” (c) beyond the fees above-mentioned ; but it is presumed that he may accept any gratuity voluntarily offered to him. As he is specially constituted an “ attesting witness ” to the signing of marriage notices, “ it is incumbent upon him to act in that capacity whenever applied to for the purpose ; and for so doing he will not be justified in demanding a fee ” (d).

*Offences and penalties.*] Every registrar of marriages who refuses or without reasonable cause omits to register any marriage which he ought to register, or carelessly loses or injures any register book in his keeping, or carelessly allows the same to be injured, is liable to a penalty not exceeding 50l. for every such offence (e).

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(b) Marriage registrars are no longer exempt from serving on juries, not being included in the schedule of exemptions under the “ Juries Act, 1870 ; ” but they are exempted from parochial and corporate offices by 1 Vict. c. 22, s. 18.

(c) Registrar General’s Regul. for Duties of Marriage Registrars.

(d) *Ib.* Supp. Regul.

(e) 6 & 7 Will. 4, c. 86, s. 42.

*Deputy registrar of marriages.]* The registrar of marriages is empowered to appoint a fit person to act as his deputy in case of his illness or unavoidable absence; such appointment being subject to the approval of the Registrar General. Every such deputy while so acting has all the powers and duties, and is subject to all the provisions and penalties imposed by the statutes concerning registrars of marriages (a); he holds his office during the pleasure of the registrar by whom he was appointed, who is civilly responsible for his acts and omissions, and he is removable by the Registrar General. In case any registrar of marriages dies, or otherwise ceases to hold his office, his deputy becomes the registrar in his place until another appointment is made and notified to him, and while so acting is vested with the same powers and duties, and is subject to the same provisions and penalties as any other registrar of marriages (b).

This power to delegate his functions should invariably be exercised by the registrar when he can secure the services of a person possessing the requisite qualifications and resident within the district (c). The appointment, made out in triplicate on the proper forms, must be transmitted to the Registrar General, who, if he sees no reason to the contrary, will notify his approval thereon, and return two of the forms, one

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(a) The exemption under sect. 18 of 1 Vict. c. 22, from every parochial and corporate office, extends to deputy registrars of marriages; but since the "Juries Act, 1870," they are no longer exempted from serving on juries.

(b) 19 & 20 Vict. c. 119, s. 16.

(c) When the registrar of marriages is also registrar of births and deaths, he is recommended to appoint as his deputy registrar of marriages the person who is acting as deputy registrar of births and deaths. He is not to have two deputies, one for marriages, and the other for births and deaths.

to be delivered to the person so appointed and the other to the superintendent registrar of the district.

*The district register office.*] It is the duty of the board of guardians to "provide and uphold," out of the monies coming to their hands or control, a register office, according to a plan to be approved by the Registrar General, for preserving the registers to be deposited therein, and for the other purposes of a district register office; and the care of the said office and the custody of the registers is to be given to the superintendent registrar of the union, parish, or place (*d*). The register office consists only of such room or rooms as have been approved by the Registrar General for that purpose; and the superintendent registrar is not at liberty to regard as a register office, and to use as such, any room or rooms not so approved, whether within the same building as the approved office, or elsewhere (*e*).

The obligation to provide a register office, according to a plan to be approved by the Registrar General, implies not only that the guardians are to make provision for the due security of the register books, but also to establish an office with proper regard to the convenience of the public, and where no offence will be given to the feelings of those who may have occasion to give notices of marriage, or to attend there for the purpose of contracting marriages (*f*). In order to

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(*d*) 6 & 7 Will. 4, c. 86, s. 9.

(*e*) The register office is to be taken for the purposes of the Marriage and Registration Acts, to be within the district of which it is the register office, although not locally situated therein. 7 Will. 4 & 1 Vict. c. 22, s. 12.

(*f*) In many districts the register office is established at the Union workhouse, an arrangement justified on the ground of a saving of expense to the ratepayers, and the convenience of the officers, but often repugnant to the feelings of non-conformists.

‘uphold’ the register office, the guardians must provide proper furniture and whatever else is necessary for conducting the business there, the cost of which should be charged upon the poor-rate (a).

For better enabling fit register offices to be provided the guardians are empowered to borrow money for the purpose and to charge the amount of the sum borrowed on the future poor-rates of the union, or in the manner provided by the Act of 4 & 5 Will. 4, c. 76, s. 24, with respect to monies borrowed for building workhouses ; save only that the yearly instalments to be repaid shall not be less than 1-20th of the sum borrowed, with interest on the same, and need not be more in any one year (b).

If the guardians neglect or refuse to provide and uphold a register office, the Commissioners of the Treasury may direct one to be provided at an expense not exceeding 300*l.*, and make an order on the guardians for the repayment of the money so expended out of the monies coming to their hands (c).

Until a register office is provided in any district the superintendent registrar is required to appropriate some fit room or rooms to be approved by the Registrar General, as the register office of that district (d). In the event of a temporary register office being thus provided by the superintendent registrar, the guardians will, it is presumed, be liable to pay him a reasonable sum, by way of rent, for the room or rooms

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(a) The register office, if used exclusively as such, is exempt from poor-rate, on the ground that the maintenance of it is a charge and not a benefit, and that it constitutes no ability in any occupier,—in other words, that there is no beneficial occupation.

(b) 7 Will. 4 & 1 Vict. c. 22, s. 19.

(c) *Ib.* s. 20.

(d) *Ib.* s. 21.

set apart for that purpose, until a proper office be provided elsewhere, with the approval of the Registrar General (*e*); or the expense will have to be defrayed in the same way as those which are referred to in the 4th sect. of 6 & 7 Will. 4, c. 86, as "not herein otherwise provided for."

The district register office is to be open daily (except on Sundays, Christmas Day, and Good Friday) during reasonable hours, and proper attendance given for receiving marriage notices, issuing certificates and licences for marriage, allowing searches in the indexes, and other business. For marriages at the register office a special appointment must be made beforehand, in order to insure the attendance of the superintendent registrar, as well as of the registrar of marriages, at a convenient time to all concerned. The superintendent registrar is not obliged to open the register office on a Sunday; he may do so, however, as an act of favour, for the purpose of allowing the celebration of marriages. He may also, on a Sunday, issue a certificate or grant a licence for marriage, provided the legal period of notice has fully expired; but he is under no official obligation to do so (*f*).

SECT. 2.—PLACES IN WHICH MARRIAGES, OTHER THAN THOSE BY THE ESTABLISHED CHURCH, MAY BE SOLEMNIZED.

We have already seen that after the 26 Geo. 2, c. 33,

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(*e*) *Wickham v. Guardians of Hoo Union*, Maidstone Spring Assizes, 1857.

(*f*) As regards the "one whole day" which must intervene between the day of the entry of the notice and the grant of a licence, Sunday is to be reckoned as *dies non*; therefore if notice be given on a Saturday the licence should not be granted until the following Tuesday.

and previously to the last day of June, 1837, no marriage could be solemnized according to law in England, except by a clergyman of the Established Church, and according to the rites of that Church (*a*) ; the only exception made was in favour of Jews and Quakers, who were permitted to contract marriages conformably to their own usages.

By the Marriage Act of 6 & 7 Will. 4, c. 85, Dissenters and Roman Catholics are enabled to contract marriages according to their own forms, without being compelled to go through the ceremonies of the Church of England ; and those persons who desire it may be married by a purely civil ceremony. In either case the marriages must be conformable to the provisions of the statutes ; certain preliminary proceedings, which stand in place of the banns or licence of the Established Church, are required to be taken in the district register office ; and the presence of a civil registrar at the celebration of the marriage is in all cases required, the Quakers and Jews having their own special officers who act as registrars.

Marriages other than those by the Established Church may be solemnized :

(1.) In the chapels or places of worship of Roman Catholics or Protestant Dissenters which have been registered for the purpose, termed in the statute "registered buildings ;"

(2.) In the district register offices, sometimes termed superintendent registrars' offices ;

(3.) Between parties being both of the Jewish per-

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(*a*) See Chapter I. The stat. 33 Geo. 3, c. 32, for the relief of Roman Catholics from certain disabilities, expressly provides that it should not repeal any part of the statutes concerning marriages.

suation, in a synagogue or in a private house, according to the usages of the Jews ;

(4.) Between parties being both or either of them members or a member of the Society of Friends (Quakers), or professing with or following the persuasion of that Society, or authorised by its rules to marry according to the usages thereof.

*Registered buildings.]* The validity of marriages in a Nonconformist or a Roman Catholic place of worship depends upon several circumstances, namely :

(1.) The building must have been *registered* for the solemnization of marriages therein pursuant to the 18th sect. of the Act 6 & 7 Will. 4, c. 85. And in order thereto,

(2.) It must have been "*certified according to law*" as a place of meeting for religious worship under one of the statutes in that behalf.

(3.) It must have been *used* as a place of religious worship during one year at the least immediately preceding such registration, unless the building be one used *in lieu* of some other building which had been previously registered for marriages.

(4.) It must be a "separate" building ; unless it be a Roman Catholic chapel under the same roof with another building, in which case it must have been certified and used for public religious worship during one year next before registration (*b*).

The legal incidents connected with certifying places of meeting for religious worship, and with the subsequent process of registering places of worship for marriages, demand particular notice.

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(b) 7 Will. 4 & 1 Vict. c. 22, s. 35.



SECT. 3.—OF CERTIFYING PLACES OF MEETING FOR  
RELIGIOUS WORSHIP.

Every *registered building* for the solemnization of marriages must have been certified "according to law," as a place of religious worship. Although the Toleration Act (a), and other remedial Acts have given the sanction of the law to the religious worship of Protestant Dissenters and Roman Catholics, according to their own rites, the benefit of these statutes was conditional upon a compliance with certain prescribed regulations. Under the Toleration Act of William and Mary, congregations or assemblies of *Protestant Dissenters* were allowed and protected, provided the places of meeting for religious worship were certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at general or quarter sessions, and registered or recorded in such bishop's or archdeacon's court, or by the clerk of the peace. Every congregation not certified was unlawful, and the persons teaching, preaching, or officiating in any such congregation, or resorting thereto, were liable to the pains and forfeitures imposed by the laws to compel uniformity. By the 31 Geo. 3, c. 32, a similar measure of toleration was extended to assemblies for religious worship of *Roman Catholics*, provided the

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(a) 1 Will. & M., sess. 1, c. 18, which provided that for the ease of scrupulous consciences in the exercise of religion, certain penal laws against Dissenters should be construed not to extend to persons dissenting from the Church of England who would take a certain oath, and subscribe a declaration against popery. All the laws for compelling attendance on divine service were to be in force against all persons except such as came to some congregation or assembly of religious worship allowed or permitted by the Act, and certified as therein required.

places of meeting were certified to the justices of the peace ; but no priest was to perform any ecclesiastical function in such certified place of worship, until his name and residence had been recorded by the clerk of the peace.

The next statute on this subject was the 52 Geo. 3, c. 115, which repealed certain statutes of Charles II., relating to Nonconformists and conventicles (b), and imposed a specific penalty on persons permitting congregations to meet in uncertified places. This Act, which in part is still in force, provides that no congregation or assembly for the religious worship of *Protestant Dissenters*, at which there should be present more than twenty persons (besides the family and servants of the person in whose house or upon whose premises such assembly is held), shall be permitted until the place of such meeting shall have been duly certified and registered ; and every person knowingly permitting such meeting until the place shall have been so certified, shall be liable to a penalty not exceeding 20*l.* nor less than 20*s.* for every time of meeting. Preachers, teachers, and others resorting to congregations duly certified are exempted from penalties, as in the case of persons taking the oaths prescribed by the Toleration Act. The penalty for disturbing congregations permitted by law is 40*l.*

By stat. 2 & 3 Will. 4, c. 115, persons professing the Roman Catholic religion, in respect of their places of worship and schools, are to be subject to the same

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(b) Namely, 13 & 14 Car. 2, c. 1, "for preventing the mischiefs and dangers that may arise by certain persons called Quakers and others refusing to take lawful oaths;" 17 Car. 3, c. 2, "for restraining non-conformists from inhabiting in corporations;" and 22 Car. 2, c. 1, "to prevent and suppress seditious conventicles."

laws as Protestant Dissenters; and by 9 & 10 Vict. c. 59, persons professing the Jewish religion are also to be subject to the same laws.

With respect to certifying the places of worship of *Protestant Dissenters*, the stat. 15 & 16 Vict. c. 36 (1852) transferred to the Registrar-General of Births, Deaths, and Marriages in England the functions previously exercised in the bishop's or archdeacon's court, or by the justices; and provided that every such place should be certified in writing to the Registrar General through the superintendent registrar of the district in which such meeting was held (a). This Act was repealed by the 18 & 19 Vict. c. 81 (b), which recites that "it is expedient that all places of religious worship, not being churches or chapels of the Established Church should if the congregation should desire, but not otherwise, be certified to the Registrar General;" and provides (sect. 2) that every place of meeting for religious worship by certain Acts required to be certified and recorded, and not heretofore certified, may be certified in writing to the Registrar General through the superintendent registrar of the district in which it is situate; and no such place of meeting is to be certified to or registered in any court of any bishop, or archdeacon, or justices in general or quarter sessions. Thus, although the penal sections of 52 Geo. 3, c. 115, as to meetings in uncertified places remain unrepealed, the mode of certifying prescribed by that Act is no

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(a) By sect. 1 of 15 & 16 Vict. c. 36, the "registrars of dioceses and archdeaconries, and the clerks of the peace throughout England, were required to furnish the Registrar General with verified returns of certified places of religious worship; and by the stat. 19 & 20 Vict. c. 119, s. 24, the Registrar General is to allow searches to be made in these returns, and to give extracts on payment of specified fees.

(b) See Appendix.

longer allowed, while certifying to the Registrar General under 18 & 19 Vict. c. 81, is permissive only, and not compulsory. The place of worship *may* be certified to the Registrar General, "if the congregation should desire;" yet there is no other official person to whom the certification can be made. In this state of things the natural inference is, that while certifying their places of meeting for religious worship is a wise and prudent measure on the part of the congregations, it is no longer rendered indispensably necessary by law, and that the penal clauses in the Act of 52 Geo. 3, are to be regarded as obsolete.

Amongst the advantages resulting from certifying a place of worship—a process attended with trifling expense and trouble—are these :—(1) the congregation is brought within the law, and exempted beyond question from the penalties imposed by 52 Geo. 3, c. 115; (2) every certified place of worship is wholly freed and exempted from the operation of the "Charitable Trusts Act, 1853;" (3) rates and taxes cannot be levied on certified places of worship, where there is no "beneficial occupation" by any person (c); (4) the ministers are exempted from serving on juries and in the militia; (5) persons disturbing the congregations, or injuring the place of worship, are liable to heavy penalties.

When it is desired to certify a place of worship, application must be made to the superintendent registrar of the district, who will supply the requisite form of certificate. This form must be filled up and

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(c) If a chapel is used solely for religious or charitable purposes, and no pecuniary advantage arises from it to any person, although a part of it be inhabited by a door-keeper, no one can be considered to have a beneficial occupation subject to the poor-rate. *R. v. Woodward*, 5 T. R., 79.

signed in duplicate by the party certifying, with his description as "minister," "proprietor," "a trustee," "occupier," "an attendant," &c., immediately under the signature. Upon the receipt of such certificate in duplicate, the superintendent registrar will transmit it to the Registrar General, who, after having caused the place of meeting to be recorded at the General Register Office, will return one of the certificates to the superintendent registrar, to be re-delivered by him to the certifying party, and will retain the other certificate (a). The superintendent registrar, when the certificate is delivered to him for transmission to the Registrar General, is entitled to receive from the person delivering the same a fee of 2s. 6d., and no more (b).

In like manner, any place of meeting for religious worship already certified under former Acts (save those certified under 15 & 16 Vict. c. 36) may be certified to the Registrar General, and be recorded by him under 18 & 19 Vict. c. 81 (c). This provision is found to be useful when evidence of a former certifying is not forthcoming.

The statute further provides that notice shall be given to the Registrar General of every place of meeting becoming disused for the purpose for which it was certified, and directs the Registrar General, whenever it appears to his satisfaction that any certified place of worship has ceased to be used as such, to cause the record of the certification to be cancelled, and to expunge the name of such place from the list of certified places to be printed from time to time (d).

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(a) 18 & 19 Vict. c. 81, s. 3.

(b) *Ib.* s. 5.

(c) *Ib.* s. 4.

(d) *Ib.* ss. 6, 8. A copy of the list of certified places of worship is to be sent by the Registrar General to every superin-

Nothing in the Act is to affect churches or chapels of the Church of England, or the celebration of divine service according to the rites of the Established Church, by ministers of that Church "in any place hitherto used for such purpose, or being now or hereafter duly consecrated or licensed by any archbishop or bishop" (e). But places of worship of any other religious denomination may be certified to the Registrar General, whose function is simply to cause them to be recorded ; nor, indeed, is any statement of the sect or denomination necessary, inasmuch as the Act allows persons who decline to describe themselves to erase the words "calling themselves" in the form of certificate, and to insert "who object to be described by any religious appellation" (f).

If legal evidence be required that a place of meeting for religious worship has been certified according to law, the Registrar General, on payment of a fee of 2s. 6d., will furnish a certificate of the certification, provided the record thereof remains uncanceled, sealed or stamped with the seal of the General Register Office ; and every such sealed or stamped certificate, if tendered in evidence upon any trial or other judicial proceeding in any civil or criminal court, is to be received in evidence of the facts therein mentioned, without any further or other proofs of the same (g).

Marriages solemnized before 30th July, 1855, in any

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tendent registrar, and is to be open at all reasonable times to persons desirous of inspecting it, on payment to such superintendent registrar of a fee of one shilling (s. 7).

(e) 18 & 19 Vict. c. 81, s. 10.

(f) Chapels, of which the ministers are clergymen in orders of the Church of England have thus been certified, although in several cases the appellation used has been "Free Church of England."

(g) 18 & 19 Vict. c. 81, s. 11.

*registered building* which may not have been *certified* according to law are to be as valid in all respects as if such place of worship had been so certified (*a*).

SECT. 4.—OF REGISTERING PLACES OF WORSHIP FOR  
MARRIAGES.

Before a marriage can be solemnized in any place of worship not belonging to the Established Church, such place of worship (having first been certified according to law) must be duly registered by the Registrar General for the solemnization of marriages therein (*b*). The place of worship (unless a Roman Catholic chapel) must be "*a separate building*," that is, it must be within itself a building separately used for the purposes of public worship, and not part of another building, as a room in a house, or the like; but it is not necessary that it be used *solely* for religious worship; therefore, although used as a Sunday school, or for any other purpose for which chapels are usually or occasionally used, so that its character as a place of religious worship is retained, it will still be a separate building within the meaning of the Act. Nor is it necessary that it shall be *detached* from other buildings.

The mode of procuring the registration of the place of worship for marriages is as follows:—Any proprietor or trustee of such separate building may apply to the superintendent registrar of the district in which the same is situate, and that officer will deliver to

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(*a*) 18 & 19 Vict. c. 81, s. 13.

(*b*) 6 & 7 Will. 4, c. 85, s. 18. Unless it can be clearly shown that the building had been certified prior to 1852, its certification under 18 & 19 Vict. c. 81 will be necessary before it can be registered for marriages.

him two blank forms of certificate (c), each to be signed by twenty *householders* at the least, and countersigned by such trustee or proprietor (d), certifying that the place of worship is a separate building duly certified according to law, that it has been used by them during one year at the least as their usual place of public religious worship, and that they are desirous that it should be registered for the solemnization of marriages therein.

The trustee or proprietor, having obtained the signatures of at least twenty such householders to each of the certificates, and countersigned them both himself, must then deliver them to the registrar, and must at the same time pay him the sum of 3*l.*, to which he is entitled by the statute (e).

The superintendent registrar will then send both the certificates to the Registrar General, who will register the building in a register book kept at the General Register Office for that purpose. The Registrar General will endorse on both certificates the date of the registry, and will keep one of the certificates with the records of the General Register Office; he will return the other to the superintendent registrar, who will keep the same with the other records of his office, and will enter the date of the registry in the

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(c) These forms are furnished to superintendent registrars by the Registrar General.

(d) Where the place of worship is settled upon trustees, one "trustee" at least, and where it is private property, a "proprietor," must join in the application for registering the building. Any proprietor or trustee, should there be more than one, may procure the building to be registered, although the others dissent; and where the trusts upon which the trustees hold such building make no mention of permitting marriages to be held therein, this Act will doubtless operate as such an enlargement of the trusts as to enable them to permit marriages without a breach of trust.

(e) 6 & 7 Will. 4, c. 85, s. 18.



book (termed "Registry of Buildings Book") furnished to him for that purpose by the Registrar General. The superintendent registrar will then give a certificate of such registry under his hand, on parchment or vellum (a), to the proprietor or trustee of the building, by whom the certificates were delivered to him, and will give public notice that the building has been registered for marriages by advertisement in some newspaper circulating within the county, and also in the *London Gazette* (b). The fee above mentioned covers the whole expense of the registry, including the vellum certificate and the advertisements. As soon as the certificate of registry has been issued, it is competent for persons to be married in the registered building (after due notice given, and the grant of licence or certificate), although the required advertisements may not have actually appeared at the time.

(a) Blank forms of this certificate, printed on vellum, are furnished by the Registrar General.

(b) The following is the prescribed form of advertisement:—  
 "Notice is hereby given that a separate building, named \_\_\_\_\_, situate at \_\_\_\_\_, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, in the district of \_\_\_\_\_, being a building certified according to law as a place of religious worship, was on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, duly registered for solemnizing marriages therein, pursuant to the Act of 6 & 7 Will. 4, c. 85. Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

"Superintendent Registrar."

This notice must be verified at the General Register Office before it can be inserted in the *London Gazette*, and it may be conveniently sent up (with the dates left blank) when the certificates are transmitted. Its insertion is generally procured through an advertisement agent, as the Registrar General does not undertake the agency. The charge for insertion in the *Gazette* depends not alone on the length of the notice, but also on the time before publication at which it is handed in; if on the morning of Tuesday or Friday, an extra charge is made. Payment must be made by special stamps.

*Roman Catholic places of worship.*] If a Roman Catholic church or chapel be a "separate building," certified according to law as a place of worship, and it has been used during one year at least for the public religious worship of Roman Catholics, any proprietor or trustee may apply to the superintendent registrar of the district to have such building registered for the solemnization of marriages therein, in the same manner as any other certified place of worship being a separate building. But to meet the case of Roman Catholic chapels not being "separate" but forming part of other buildings, the 35th section of 1 Vict. c. 22 (c), provides that "any building which shall have been licensed and used during one year next before registration for public religious worship as a Roman Catholic chapel exclusively, shall be taken to be a separate building for the purpose of being registered for the celebration of marriage, notwithstanding the same shall be under the same roof with any other building, or shall form a part only of a building." A distinct form of certificate is provided, to be signed by twenty householders at the least, setting forth when and to whom the building was certified as a place of meeting for public worship, and, further, that it has been "so certified, and licensed, and used during one year at the least now last past for public religious worship as a Roman Catholic chapel exclusively." The distinction between these chapels which are not separate buildings and others

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(c) The question having arisen as to whether certain Roman Catholic chapels could be deemed "separate" buildings within the meaning of 6 & 7 Will. 4, c. 85, s. 18, when connected by an internal communication with the dwelling house of the priest, or under the same roof with rooms used for other purposes than religious worship, this enactment was intended for the removal of doubts on the subject.

consists in the fact that the former must have been certified and licensed (a) as well as used for one year prior to the delivery of the householders' certificate to the superintendent registrar.

*Building registered for marriages becoming disused.]* If any building registered for solemnizing marriages therein shall afterwards be disused for the public religious worship of the congregation on whose behalf it was registered, the Registrar General, on that fact being made to appear to his satisfaction, shall cause the registry thereof to be cancelled; after which cancellation it will not be lawful to solemnize any marriage therein until it shall have been again registered (b).

When, therefore, a registered place of worship shall have passed into the hands of a religious denomination other than that to which it belonged at the time it was registered for marriages, it must be registered afresh by the new congregation (upon the certificate of twenty householders, &c., as before mentioned), if it be their desire that marriages may be solemnized therein. But so long as the original registry remains uncanceled, even though the building may have ceased for a time to be used as a place of worship, marriages may legally be celebrated in it.

*Substitution of a new place of worship for another disused.]* Where the registry of a building which has been disused by the congregation on whose behalf it was registered has been cancelled, and the congrega-

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(a) The term "licensed" must be taken as synonymous with "certified." It means simply that the building has been certified as a Roman Catholic place of worship. See 5 Burn's Jus. 257, tit. Popery.

(b) 6 & 7 Will. 4, c. 86, s. 19.

tion have removed to another building, the Registrar General may substitute and register such new place of worship, provided it has been *certified* according to law, instead of the disused building, although the new building may not have been used by the congregation during one year, as required in the case of an original registry. But the same application must be made by a trustee or proprietor of the substituted chapel to the Registrar General through the superintendent registrar of the district, and certificates obtained signed by twenty householders and the trustee or proprietor applying; the same fee of 3*l.* must be paid, and the same proceedings in every respect taken as in the case of an original registration; the certificates for the registry of the substituted building must also embody a request that the registry of the disused building may be cancelled (c).

In order to obviate doubts as to whether the building is one in which marriages may lawfully be solemnized where any chapel has been pulled down and a *new* building has been erected on the same site, or partly on the same site (whether the old materials have been used or not) a fresh registration is necessary, precisely as in the case of a new chapel built on an entirely different site. The trustees should procure the registry of the old building to be cancelled, and cause the new building (which must first be certified under 18 & 19 Vict. c. 81) to be registered as a "substituted building." But although, in the case of a chapel which has been pulled down and rebuilt, the registry of the non-existent building will not avail for the new one, yet where a chapel has been merely enlarged or altered, so that in the main the old fabric is preserved, a re-registration will not be requisite.

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(c) 6 & 7 Will. 4, c. 85, s. 19.

Any question which may arise as to whether a fresh registry is necessary or not, would no doubt be determined by the Registrar General.

SECT. 5.—OF NOTICE OF MARRIAGE.

*Marriage notice, how to be given.*] When parties intend to be married in a registered building, or in the district register office, whether by certificate (without licence) or by licence, notice thereof must be given to the superintendent registrar of the district, or to two superintendent registrars, according to the circumstances of the case (a).

The notice may either be given in person to the superintendent registrar to whom it is addressed, or it may be forwarded to him by the post, or otherwise, with the fee of one shilling for the entry of it in the "Marriage Notice Book," and that officer will be justified in so receiving it, when properly signed and attested, accepting the signature as attesting witness of a registrar or deputy registrar as evidence that the notice has been duly signed by the person professing to give it. The attesting registrar, however, is not bound to forward the notice, although he may do so as a matter of courtesy, if he see fit. It devolves

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(a) 6 & 7 Will. 4, c. 85, s. 4; 19 & 20 Vict. c. 119, sects. 2, 6. Every superintendent registrar and every registrar of marriages is furnished with blank forms of notice, which parties may fill up themselves, or the officer will, as an act of favour, but not of official obligation, fill up for them on the proper information being given to him. Ministers of registered places of worship may obtain from the local officer a few blank forms to enable them to assist persons to fill up the notice. The forms are of four descriptions:—No. 1, for use where both parties are of *full age*; No. 2, where either party is a *minor*; No. 3, where parties of full age wish to marry out of the district under 3 & 4 Vict. c. 72; No. 4, for the same purpose where either party is a minor. For marriage *by licence* the form of notice must be impressed with a 2s. 6d. stamp.

upon the person giving the notice to take such steps as will ensure its due transmission, and, if sent by post, the postage must be prepaid.

The notice, when filled up, must contain the following particulars :—

1. The *full* names and surnames of the parties.
2. The *condition* of each ; *i.e.*, whether bachelor or spinster, widower or widow.
3. The rank, profession, or calling.
4. The age of each (*b*).
5. Dwelling-place : the name or number of the house, and name of the street, &c., with that of the town or village in which each party then resides.
6. The length of residence in the district. If not more than a calendar month, the number of days to be stated ; if more than a calendar month, the words "more than a month" may be inserted.
7. The name of the church, chapel, registered building, or register office in which the marriage is to be solemnized, and where situate.
8. The district and county in which the parties respectively dwell.

*Solemn declaration of party giving notice.]* Every notice of marriage contains a "solemn declaration" which the party giving the notice must make and sign in the presence of a registration officer competent to attest it, that he or she believes that there is no impediment of kindred or alliance, or other lawful hindrance to the intended marriage, and that the parties (or one of them) have for the requisite number of days

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(*b*) The exact age last birthday should be stated (see Sched. A 19 & 20 Vict. c. 119) ; but where it is unknown, or the parties object to give it, the words "of full age" or "minor" (as the case may be) should be inserted.

immediately preceding the giving of such notice dwelt within the district of the superintendent registrar to whom the notice is given. And when either of the parties, not being a widower or widow, shall be under the age of 21 years, the party making the declaration must further declare that the consent of the person or persons, whose consent to such marriage is by law required (a), has been given, or (as the case may be) that there is no person whose consent to the marriage is by law required. Without this solemn declaration no certificate or licence for marriage can issue; and every person who shall knowingly or wilfully make and sign or subscribe any false declaration, or who shall sign any false notice for the purpose of procuring a marriage, is liable to the penalties of perjury (b).

As a knowingly false statement of any of the particulars contained in the Notice of Marriage will subject the party to a prosecution for perjury, no person should be allowed to sign this declaration until either he has himself read over the form or it has been carefully read over and explained to him, in case he be unable to read (c).

*Attestation of the notice.*] Whether the marriage be intended to be solemnized by licence or by certificate, the notice and declaration must be signed by the party giving and making the same in the presence of the superintendent registrar to whom the notice is given (*i.e.* addressed), or of his deputy, or of some registrar of births and deaths or of marriages acting in and for the district in which the party giving the notice resides, or in the pre-

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(a) See *ante*, Chap. III.

(b) 19 & 20 Vict. c. 119, s. 2. For the form of Notice and Declaration see Sched. A of this statute, in the Appendix, *post*.

(c) Inquiry should always be made as to whether the parties are related to each other.

sence of the deputy of one of such registrars. It is not competent for a superintendent registrar to attest a notice addressed to the superintendent registrar of *another* district (*d*). The officer before whom the notice is signed and the declaration is made must attest the same by adding thereto his own name, description, and place of abode (*e*). Unless the notice be so signed and attested the superintendent registrar is instructed not to recognize or accept it as a valid notice, nor to enter it in the "Marriage Notice Book," but to return it for amendment to the party from whom he received it.

It will be observed that the registrars of births and deaths, as well as registrars of marriages, and their deputies, are constituted attesting witnesses, in order to afford facilities to persons desirous of giving notice of marriage when residing at a distance from the district register office; their authority so to act is not confined to the case of persons residing within the limits of the registrar's *sub-district*, for they may severally attest the signing of notices intended to be given by persons who reside anywhere within the *super-*

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(*d*) When therefore a notice is addressed to the superintendent registrar of a district in which the party giving it does not reside, it must be attested by such superintendent registrar, or his deputy, or else by some registrar or deputy registrar of the district in which such party does reside.

(*e*) 19 & 20 Vict. c. 119, s. 2. The regulations of the Registrar General state that the "solemn declaration" required by the statute not being a statutory declaration under the 6 & 7 Will. 4, c. 62, "the officer who attests it is not to consider himself as acting in a judicial or authoritative capacity, but merely in the same manner as an ordinary witness to the signing of a deed, a will, or other legal instrument"; and further, that it is incumbent upon the officers to act as attesting witnesses "whenever applied to for the purpose, and that for so doing they will not be justified in demanding a fee" (Supp. Reg. p. 26). The deputies of registration officers may act at all times and in common with their principals as attesting witnesses to the signing of marriage notices.



*intendent registrar's district* in which they are registration officers.

*Where the marriage is to be by certificate without licence.]* When parties, both of whom reside in the same district, intend to be married *without licence* (i.e. by certificate), one of them must give to the superintendent registrar of the district in which they have dwelt for not less than *seven* days next preceding, a notice signed by him or her of their intention to marry. Such notice must contain all the particulars required by the statute (including the fact of the residence of the parties for the space of seven days within the district), with the solemn declaration in the body or at the foot thereof duly made and signed, and it must be attested by a competent attesting witness in the manner already mentioned (a).

Where the parties dwell in *different districts* (i.e. where both parties have not dwelt for the last seven days in the same district) the like notice must be given by them, or one of them, to the respective superintendent registrars of the districts in which they have severally dwelt for the last seven days; and the like declaration must be made and signed by the party or parties giving the notice, and the same must be duly attested as before mentioned (b).

The declaration required to be made in order to a marriage *without licence* is exempted from stamp duty by the Stamp Act of 1870.

After the expiration of 21 clear days after the day

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(a) See *ante*, p. 162.

(b) Both notices may be given by the man, or both by the woman, or each of the parties may give the notice in his or her own district. Care should be taken to avoid discrepancies in the two notices as to any of the particulars required to be stated.

of the entry of the notice in the "Marriage Notice Book," the superintendent registrar may issue his certificate for the marriage; thus, if the notice be entered on the 1st of the month, the certificate may be issued on the 23rd, and not before.

*Where the marriage is to be by licence.]* In this case one of the parties intending marriage must give to the superintendent registrar of the district in which "one of the said parties hath for the space of fifteen days immediately preceding the giving of such notice had his or her usual place of abode and residence" (c), a notice signed by him or her, of their intention to marry. The notice must specify the particulars required in the case of a notice for marriage by certificate, except that where the parties do not both dwell in the same superintendent registrar's district, it is not necessary to state how long each of the parties has resided in his or her dwelling-place, but only how long the party residing in the district in which the notice is given has so resided (d). The party giving the notice must also make and subscribe a solemn declaration in writing as to the absence of lawful hindrance to the marriage, and as to the residence of one of the parties for the space of *fifteen days* next preceding the giving of the notice within the district of the superintendent registrar to whom the notice is given (e); and the forms already described with regard to the attestation thereof must be observed (f).

Only one notice for marriage by licence is necessary

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(c) 19 & 20 Vict. c. 119, s. 2.

(d) *Ib.* s. 6.

(e) *Ib.* s. 2.

(f) *Ante*, p. 162.

where both the parties do not dwell in the same superintendent registrar's district. In that case sect. 6 of 19 & 20 Vict. c. 119 provides that "it shall not be required that notice of such intended marriage shall be given to more than one superintendent registrar, but a notice to the superintendent registrar of the district in which one of the parties so intending marriage resides, shall be sufficient." But this provision will not supersede the requirements of sect. 2 of the Act with respect to marriages intended to be had by licence. Therefore when the parties reside in different districts, such notice can be given by either of them to the superintendent registrar of *either* district, only in case each of the parties has dwelt for the space of fifteen days immediately preceding the giving of the notice in the district of his or her residence as therein described. For example, A. having dwelt fifteen days in York, and intending to marry at Canterbury, B., who has dwelt there fifteen days, may at his option give notice of such intended marriage either to the superintendent registrar at York or to the superintendent registrar at Canterbury; and either superintendent registrar, having received such notice, may at the proper time grant his licence for the marriage in the place named in the notice. In like manner notice may be given in either district by B. (a).

But in the case of an intended marriage by licence between parties living in different districts, one of whom has resided less than fifteen days in the district of his or her residence, the notice cannot be given to the

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(a) This will not invariably apply, however, to the case of a marriage by licence in the "usual place of worship" of one of the parties, as it may then be requisite to give notice to the superintendent registrar of the district nearest to the place of worship, as will presently be explained.

superintendent registrar of either district. For example, if C. has resided in Marylebone more than fifteen days, and D. at Dover twenty-four hours (or for any period less than fifteen days), the notice must of necessity be given to the superintendent registrar of the Marylebone district, because the declaration must state that one of the parties has resided fifteen days in the district of the superintendent registrar to whom the notice is given; although the marriage may take place either at Dover or in Marylebone upon the authority of a licence granted by the superintendent registrar of the latter district.

From the terms of sect. 6 of 19 & 20 Vict. c. 119, which enacts that "a notice to the superintendent registrar of the district in which one of parties so intending marriage resides shall be sufficient," an impression is conveyed that the notice may be given by either party, in either district, provided that *one of the parties* has dwelt not less than fifteen days in the district of his or her residence, as described in such notice. But this section must be construed in connection with sect. 2, otherwise clandestine marriages would be greatly facilitated. Suppose, for instance, A. and B. to be residents in the same district; for the purpose of effecting a secret marriage A. would only have to go to another district and give the notice (not being required to state the length of his residence there); on the second day after notice the licence would be granted, and the parties would be married without any publicity whatever in the district in which one of them had resided fifteen days.

The declaration, which is equivalent to an affidavit, annexed to a notice of marriage by licence is liable to 2s. 6d. stamp duty; the notice must therefore be given on a form impressed with a stamp of that value, other-

wise the penalty stated in the "Stamp Act of 1870" will be incurred.

When the marriage is to be had by licence, *both parties* must be actually in England at the time the notice is given, and the "district and county in which the parties respectively dwell" must be stated in the proper column in the form of notice. Therefore, if either of the parties usually resides in Scotland or Ireland, or in a foreign country, such party must come to England and have a "dwelling-place" in some English or Welsh district and county at the time of giving the notice. It is not necessary, however, to state how long the other party has resided in the district, provided one of the parties has dwelt the requisite fifteen days in the district in which the notice is given; therefore it would be sufficient if a person coming from another country were to arrive in England three days before the day fixed for the marriage ceremony. For example, if the wedding is intended to take place on a *Thursday*, the notice may be given to the superintendent registrar on the preceding *Tuesday*—the party from another country being actually resident in some district in England at the time of the giving such notice—and on the *Thursday*, being the second day after the day on which the notice was given, the licence may be granted, and the marriage celebrated before twelve at noon.

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serve to illustrate the conditions under which the superintendent registrar may be called upon to grant his licence :

1. Where both the parties have, "for the space of fifteen days immediately preceding the giving of the notice," had their "usual place of abode and residence" *within the same district*, the superintendent registrar of that district must grant the licence.

2. Where A. has resided fifteen days in the X. district, and B. has resided fifteen days in the Y. district, whether the marriage is to take place at X. or Y., the notice may be given to, and the licence obtained from, the superintendent registrar of either district.

3. Where C. has been resident in the Y. district say three days, and D. has been resident in the Z. district fifteen days—the marriage to be celebrated at Z.—the notice must be given to, and the licence obtained from the superintendent registrar of the Z. district.

4. Where E. has resided fifteen days in the X. district, and F. seven days in the Y. district—the marriage to take place at Y.—the notice must be given to the superintendent registrar at X., who must grant the licence.

The same principle is followed where the marriage is to take place out of the district of the residence of either party under the Act of 3 & 4 Vict. c. 72, or in the "usual place of worship" of one of them. For example ; if A. has resided less than fifteen days in district X., and B. has resided fifteen days in district Y., and they propose to be married in district Z., the notice must be given to the superintendent registrar of district Y. by whom the licence will be granted.

*Notice for marriage out of the district in which the parties dwell, under 3 & 4 Vict. c. 72.] When either of*

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The same principle is followed where the marriage is to take place out of the district of the residence of either party under the Act of 3 & 4 Vict. c. 72, or in the "usual place of worship" of one of them. For example ; if A. has resided less than fifteen days in district X., and B. has resided fifteen days in district Y., and they propose to be married in district Z., the notice must be given to the superintendent registrar of district Y. by whom the licence will be granted.

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The same principle is followed where the marriage is to take place out of the district of the residence of either party under the Act of 3 & 4 Vict. c. 72, or in the "usual place of worship" of one of them. For example ; if A. has resided less than fifteen days in district X., and B. has resided fifteen days in district Y., and they propose to be married in district Z., the notice must be given to the superintendent registrar of district Y. by whom the licence will be granted.

*Notice for marriage out of the district in which the parties dwell, under 3 & 4 Vict. c. 72.]* When either of



the parties dwells in a district within which there is not any registered building wherein marriage is solemnized according to the form, rite, or ceremony the parties desire to adopt, the Act of 3 & 4 Vict. c. 72 enacts that "it shall be lawful for any party intending marriage, under the Act of 1836, to declare at the time of giving the notice by endorsement thereon, "The religious appellation of the body of Christians to which the party professeth to belong, and the form, rite or ceremony which the parties desire to adopt in solemnizing their marriage, and that to the best of his or her knowledge and belief there is not, within the district in which one of the parties dwells, any registered building in which marriage is solemnized according to such form, rite, or ceremony, and the district nearest to the residence of that party in which a building is registered wherein marriage is so solemnized, and the registered building within such district in which it is intended to solemnize their marriage." It is then provided that after the expiration of the proper term of notice the superintendent registrar may issue his certificate, after which the parties are at liberty to solemnize their marriage in the registered building stated in such notice (a).

It will be observed that there is nothing in the terms of the statute to prevent parties who are of one denomination, as for example, members of the Church of England, from having their marriage solemnized out of the district of their residence in a registered building of *another* denomination—for instance, that of the Independents. All that the act requires in reference to this particular is, that the party giving notice of marriage, shall declare :—

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(a) 3 & 4 Vict. c. 72, s. 2. The additional notice may be given according to the form in the schedule to the Act annexed, or to the like effect (s. 3). See *Appendix—Statutes*.

1. To what religious denomination he or she belongs ;
2. The particular form, rite, or ceremony the parties desire to adopt in solemnizing their marriage (not restricting them to the form in use by the religious denomination to which either of them professes to belong) ;
3. That within the district of the residence of "one" of the parties there is no registered place of worship in which marriage is celebrated according to the form they desire to adopt ;
4. The nearest district to the residence of such one of the parties having within it a registered building of that description ; and
5. The name of the registered building in such last-mentioned district wherein it is proposed that the marriage shall take place.

It will be competent, therefore, for the party giving notice of marriage under this Act to declare as follows :  
"I, the undersigned and within-named *James Smith* do hereby declare that I, being a member of the Church of England, and the within-named *Martha Green*, in solemnizing our intended marriage, desire to adopt the form, rite, or ceremony of the *Independents*," &c. ; for although the declarant be himself a churchman, the other party may be an Independent, and there is nothing in the act or in the schedule which renders it obligatory on the parties, in solemnizing their marriage, to adopt the rites and ceremonies of the religious denomination to which the party giving the notice belongs (b).

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(b) The following supposed case will illustrate the mode in which the Act may operate :—A. (the gentleman) belonging to the Wesleyan Methodists, residing in the district of X., is about to give notice of his intended marriage with B. (the lady), an Independent, residing in the district of Y. The parties are

*Notice for marriage in the "usual place of worship" of one of the parties.]* By sect. 14 of the Act of 19 & 20 Vict. c. 119, persons whose usual place of worship is situated in a different district from that in which they reside, may have their marriage solemnized in such place of worship, provided it be a registered building situated not more than two miles beyond the limits of the district or one of the districts (as the case may be) in which the notice of marriage has been given. Persons wishing to avail themselves of this enactment, must, when giving the notice, state therein, in addition to the description of the building in which the marriage is to be solemnized, that it is the usual place of worship of one of the parties, and must also state the name of the party whose usual place of worship it is. This must be done by inserting in the form of notice in the column headed "Church or building in which the marriage is to be solemnized," the following words immediately below the description of the building :—

*"Such building being the usual place of worship of the said ———, and situated not more than two miles beyond the limits of the district of ———."*

In the case of marriage *by licence* in the "usual place of worship," where the parties reside in different districts, it will be necessary to give the notice to the superintendent registrar of the district *nearest* to which the registered building wherein the marriage is

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desirous of being married according to the rites of the Independents. There is a registered building of the Independents in the X. district, but none in the Y. district, where B. resides, and the nearest district to her dwelling-place having within it a registered building of that denomination is the district of Z. It is, therefore, competent for the parties to have their marriage solemnized in the Independent Chapel in the district of Z. The Act requires this construction, otherwise cases would often occur in which, contrary to our English notions of propriety, it would be necessary for the lady to leave her home and travel many miles in order to accomplish her own marriage.

*Notice for Marriage in the usual Place of Worship.* 173

be solemnized is situate, unless it happen that each of the parties resides in a district the boundary of which is not more than two miles distant from the place of worship, as will often be the case in town districts. For example, A. lives in Marylebone, B. in Hampstead, and the marriage is intended to take place at the usual place of worship of B., situate in St. Pancras, within two miles of the limits of both Marylebone and Hampstead districts. In that case either A. or B. may give notice to, and obtain the licence from either the superintendent registrar of Marylebone or the superintendent registrar of Hampstead, assuming that A. and B. respectively have resided fifteen days preceding the giving of the notice in the districts of their residence. But, to take another example, if C. lives in Exeter and D. in Kensington, and the marriage is intended to take place at the usual place of worship of D., situate in Marylebone, the notice must of necessity be given to the superintendent registrar of the district of Kensington, in order to comply with the requirement of the Act as to the distance of the place of worship (within two miles) from the boundary of the district in which the notice of marriage is given. The latter case will form an exception to the general rule that notice of an intended marriage by licence may be given to the superintendent registrar of *either* district when both the parties have resided fifteen days and upwards in the respective districts of their residence.

On receiving notice for marriage in the usual place of worship of one of the parties, the superintendent registrar is not required or expected to call for positive proof of the actual distance of such place of worship from the boundary of his district, but in the absence of personal knowledge or authentic information to the

contrary, he will regard the statement in the notice, that such distance does not exceed two miles, as sufficiently definite and conclusive upon that point. On the other hand, if he actually knows that the notice is false in that or in any other particular, it is his duty to reject it altogether (a). The distance of two miles should be computed "as the crow flies," that is, in a direct line from the nearest boundary of the district.

*Notice of marriage where the parties dwell one in Ireland and the other in England.] Under the Irish Marriage Act of 9 & 10 Vict. c. 72, it is competent for a person resident in England, and intending to marry by licence in Ireland a person residing there, to give notice of such his intention to the superintendent registrar of the district in England wherein he resides. If the party in England, when giving such notice, is unable to state correctly the name of the "district" in which the other party dwells, it will be sufficient to refer to the district thus,—assuming that the party is living at Grove Farm, Maryborough parish, Queen's County, the last column of the notice may be filled up as follows:—"The district comprising Grove Farm, in the parish of Maryborough, Queen's County, Ireland." It will be the duty of the superintendent registrar to receive and enter such notice, and after the expiration of seven days next after the day of such entry to issue his certificate, precisely as he would do after one day in the case of an ordinary notice of marriage by licence when the parties are both living in this country. The notice must be given, like all other notices for marriage by licence, upon a form*

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(a) Registrar General's Supplementary Regulations for Superintendent Registrars, p. 23.

bearing an impressed stamp of 2s. 6d. ; and the certificate issued by the superintendent registrar must be on one of the forms printed in *red* ink applicable to licences (b). Upon producing this certificate the party from England will be entitled to be married in Ireland without previous residence there.

By section 7 of the Act 19 & 20 Vict. c. 119, a person dwelling *in Ireland* may there give notice of his intention to be married without licence in England to a person resident in this country. The notice must be in the mode and form used in that behalf in Ireland, and must be given to the registrar of the district within which the party has dwelt for not less than seven days. After the expiration of twenty-one days after the day of the entry of the notice, a certificate may be issued, and the production of such certificate will be as valid and effectual for authorizing the solemnization of the marriage in England as the production of the certificate of a superintendent registrar of a district in England in a case where the parties live in different districts. The party residing in England, however, must give the usual notice. Before this enactment a person living in Ireland could not marry without licence in England without previously coming here to reside for at least seven days, and then giving the usual notice to run twenty-one days more. For marriage *by licence* in England the party resident in Ireland must come to England, and be in this country when the notice is given ; and this may be done, as already stated, two days before the day fixed for the wedding. The above arrangements refer only to

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(b) In this case the superintendent registrar will be entitled only to the ordinary fees for a certificate; namely, 1s. for entering the notice, and 1s. for the certificate, with the value of the stamp in addition.

marriages other than those according to the rites of the Established Church.

*Notice of marriage where the parties dwell one in Scotland and the other in England.]* In this case no notice needs to be given in England by the party residing in Scotland nor is any temporary residence in England by such party necessary for marriage without licence. Section 8 of the Act 19 & 20 Vict. c. 110 renders a *certificate of proclamation of banns* in Scotland under the hand of the session clerk of the parish equivalent to the certificate of a superintendent registrar in England, and it will be so received, as to such party resident in Scotland, by the registrar of marriages (a). But the party residing in England must produce a superintendent registrar's certificate issued after the usual notice.

Where the marriage is to take place in Scotland the Acts make no provision for any notice being given in England by a party resident here; nor is any superintendent registrar authorized to receive a notice for any marriage to be celebrated in Scotland. The party residing in England must therefore go to Scotland and

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(a) The Certificate of Proclamation of Banns is in the following form, or to the same effect:—

ST. CUTHBERT'S PARISH, EDINBURGH.

Certificate of Proclamation of Banns for Marriage.

That *Hugh Robertson, Bookseller, residing at No. 14, George Street, in the Parish of St. Cuthbert, Widower, and Marion Allison, residing at No. 25, Abbey Street, in the Parish of St. Mary, Carlisle, Spinster,* have been Three several times duly and regularly Proclaimed in the PARISH CHURCH of ST. CUTHBERT in order to Marriage, and no objections offered, is hereby certified at St. Cuthbert's, this *fifteenth day of July, 1857, by*

*James Thompson, Session Clerk.*

conform to the law of marriage in that part of the United Kingdom.

*Entry of notice in Marriage Notice Book.*] Every superintendent registrar on the same day that he receives the notice, duly signed and attested, and otherwise correct in form, is required to enter the particulars, or to cause them to be entered, in the *Marriage Notice Book*, as well in the case of marriages by licence as of those without licence. For this he is entitled to the fee of 1s. from the person giving the notice. A copy of the solemn declaration is not to be entered. In the case of a marriage *by licence*—but not otherwise—the declaration contained in this notice is liable to 2s. 6d. stamp duty, and unless duly stamped the notice will be rejected.

The *Marriage Notice Book* is to be open at the district register office at all reasonable times, without fee, to all persons desirous of inspecting it (a). By the Registrar General's regulations it is required that the book shall be open for inspection generally from 10 A.M. until 4 P.M. upon every week day.

*Publication of notice of marriage without licence.*] Before the Act of 19 & 20 Vict. c. 119, all notices of marriage were required to be read before the board of guardians; by the above statute, however, another mode of publication is prescribed, and no notice is to be read or published before a board of guardians. In the case of a marriage without licence, the original notice, or an exact copy of it as entered in the *Marriage Notice Book*, is to be suspended or affixed in some conspicuous place in the district register office during

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(b) 6 & 7 Will. 4, c. 86, s. 4.



*twenty-one* successive days next after the day of the entry of such notice in the *Marriage Notice Book* (a). The notice is to be exhibited in such a manner that it may be most easily referred to and read by all persons coming to the office. After the period of suspension the superintendent registrar is to keep the notices with the records of his office.

SECT. 6.—ISSUING OF THE SUPERINTENDENT  
REGISTRAR'S CERTIFICATE.

*When the certificate for marriage without licence may be issued.*] After the expiration of *twenty-one* days next after the day of the entry of the notice in the *Marriage Notice Book*, the superintendent registrar to whom the notice was given, will, upon being requested by or on behalf of the party giving such notice, issue his certificate in the form of Schedule B., annexed to the Act of 19 & 20 Vict. c. 119 (b), provided that in the meantime no lawful impediment to the issuing of the certificate be shown to the satisfaction of the superintendent registrar, and provided that the issue thereof shall not have been forbidden by a person authorized in that behalf. The certificate must state, in addition to the particulars set forth in the notice, the day on which the notice was entered, and that the issue of the certificate has not been forbidden. For this certificate the superintendent registrar is entitled to receive from the party obtaining it a fee of 1s. (c).

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(a) 19 & 20 Vict. c. 119, s. 4. The provision of 1 Vict. c. 22, s. 24, which required the superintendent registrar in temporary districts to send a copy of the notice to the Registrars of Marriages, is no longer in force.

(b) See Appendix. Forms of certificate are issued to superintendent registrars by the Registrar General.

(c) 19 & 20 Vict. c. 119, s. 4.

If the parties reside in different districts, certificates will be required from the superintendent registrar of *each* district ; and 1s. must be paid for each certificate.

The twenty-one days must be reckoned *clear days* between the day on which the notice was entered and the day on which the certificate is issued ; thus, if notice be entered on 1st August, the certificate cannot be obtained until the 23rd August ; or, reckoning by weeks, if the notice be entered on the *Monday*, the certificate cannot be obtained until the following *Tuesday three weeks*.

It is not necessary for the party to apply for the certificate immediately on the expiration of twenty-one days after the notice ; but the marriage for which the certificate is the authority must be had some time within three calendar months after the day of the entry of the notice, otherwise the notice and certificate will be void (*d*).

The superintendent registrar of the district in which one of the parties dwells may issue his certificate for marriage without licence in the following places :—

1. In any church or chapel belonging to the Church of England situate within his district, provided that the parties could be lawfully married in such church or chapel after publication of banns (*e*).

2. In any registered building in his own district ; and also, if one of the parties dwells in another district, in any registered building within that district (*f*).

3. In a registered building out of his district, provided it be the “usual place of worship” of one or both of the parties, and situate not more than two

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(*d*) 19 & 20 Vict. c. 119, s. 4.

(*e*) 6 & 7 Will. 4, c. 85, s. 1.

(*f*) *Ib.* s. 20.

miles beyond the boundary of the district in which one of the parties dwells (a).

4. In a registered building out of his district, in pursuance of a notice given under the Act 3 & 4 Vict. c. 72 (b).

5. In the register office of his own district; and also, when the parties dwell in different districts, in the register office of the district in which the "other party" dwells.

6. For the marriage of persons one or both of whom belong to the Society of Friends, called Quakers, or, if not members, are in profession with or of the persuasion of the Society, or produce a certificate signed by a registering officer of the Society that they are authorized by its rules to be married according to the usages thereof (c).

7. For the marriage of persons both of whom profess the Jewish religion, according to the usages of the Jews, in a synagogue or in a private dwelling-house.

The powers given to the superintendent registrar to issue his certificate for marriage out of the district wherein either of the parties resides, namely, under 3 & 4 Vict. c. 72, and in "the usual place of worship," do not extend to marriages intended to be solemnized in any church or chapel of the Church of England; those powers have reference only to the registered places of worship of Dissenters and Roman Catholics.

(a) 19 & 20 Vict. c. 119, s. 14.

(b) The superintendent registrar must invariably make and sign a memorandum on the back of the certificate as follows: "Be it remembered that the within certificate was issued by me pursuant to a notice of marriage duly given according to the provisions of the Act of 3 & 4 Vict. c. 72. Witness my hand this      day of      18      ,      Superintendent Registrar."

(c) 35 Vict. c. 10.

*Where the "other party" dwells in Ireland or Scotland.]* In the case of an intended marriage in England where one of the parties dwells in *Ireland*, it is competent for the party dwelling in Ireland to procure a certificate from a registrar there, after due notice given in the manner prescribed by the Act of 9 & 10 Vict. c. 72 ; and such certificate will be equivalent to that of a superintendent registrar in England. A person living in Ireland is thus enabled to marry without licence on his or her arrival in England without taking up a previous residence here (d).

Where one of the parties dwells in England and the other in *Scotland*, and the marriage is intended to be had here, it is competent for the party dwelling in Scotland to procure a certificate of proclamation of banns in Scotland ; and such certificate will have the same effect as that of a superintendent registrar in England, enabling the person living in Scotland to be married without licence on arriving in an English district without taking up a previous residence (e).

In neither of these cases will the production of the Irish or Scotch certificate supersede the necessity for producing a superintendent registrar's certificate with respect to the party who is resident in England.

*Certificate for marriage by licence.]* Notwithstanding the parties desire to be married by licence, the issue of a certificate (to accompany the licence) by the superintendent registrar to whom the notice has been given cannot be dispensed with ; although, as the licence is the authority for the marriage, the object and uses of

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(d) 19 & 20 Vict. c. 119, s. 7. The section is also retrospective, and renders valid past marriages under certificates issued respectively in England and Ireland.

(e) *Ib.* s. 8.

the accompanying certificate are not obvious. Every superintendent registrar receiving notice of an intended marriage by licence must, however, after the expiration of *one whole day* next after the day of the entry of such notice in his *Marriage Notice Book*, issue under his hand, upon the request of the party giving such notice conveyed personally or otherwise, a *certificate* in the form set forth in the Act (a), and also a *licence to marry*, provided that in the meantime no lawful impediment to the issuing of such certificate and licence be shown to the satisfaction of the superintendent registrar, and that the issue of the certificate has not been forbidden. For this certificate, which must contain the particulars set forth in the notice, with the date on which the notice was entered, the superintendent registrar is entitled to a fee of 1s. The marriage must be solemnized within three calendar months after the entry of notice (b). As this certificate always accompanies the licence, in which the issue of the certificate is mentioned as having actually taken place, the other incidents connected with it are the same as those mentioned with regard to licences in the next section.

Under the Irish Marriage Act of 9 & 10 Vict. c. 72, a certificate enabling a person living in England to be married *by licence* in Ireland may be issued by the superintendent registrar of the English district in which such person resides. But in this case the certificate cannot be issued until after the expira-

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(a) 19 & 20 Vict. c. 119, Sched. (B), see Appendix.

(b) *Ib.* s. 9. The certificates to be issued for marriages by licence are to be made out on forms printed with *red ink* on watermarked paper, with the word "Licence" laid in; while the certificates for marriages without licence are to be printed with black ink. These forms and certificates are furnished by the Registrar General under 6 & 7 Will. 4, c. 85, s. 8.

tion of *seven days* next after the day of the entry of the notice (c).

SECT. 7.—THE SUPERINTENDENT REGISTRAR'S LICENCE  
FOR MARRIAGE.

*When the licence may be granted.*] Parties who are willing to incur the expense of a licence may have their marriage celebrated twenty days sooner after notice than by certificate (without licence). The previous residence of *one of the parties* beyond the day on which the notice is actually given is dispensed with, although a longer previous residence by the *other party* is required for licence than for certificate,—namely, fifteen days instead of seven. One clear day only need elapse between the day of the entry of the notice and the day on which the licence is granted: thus, if the notice be given and entered on a *Monday*, the licence can be had on the *Wednesday* following; and the marriage may be solemnized between the hours of 8 and 12 in the forenoon of the latter day.

Under the Marriage Act of 1836 the superintendent registrar was not authorized to grant licences for marriages out of his district, but this restriction has been removed by subsequent enactments. The same act required that one of the parties should appear personally before the superintendent registrar and make the oath, or instead of an oath the affirmation or declaration therein prescribed. This, however, is no longer required, as the "solemn declaration" embodied in the notice of marriage is substituted for such oath.

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(c) It must be made out on one of the forms printed in *red*, the fee payable for it being only 1s., in addition to 1s. for entering the notice, and 2s. 6d. for the stamp on the notice form.

The licence, which must be in the form or to the effect set forth in the schedule of the Act of 19 & 20 Vict. c. 119, is an authority for the marriage at any time within three calendar months next after the day of the entry of the notice ; after that period the notice and licence will be void (*a*).

The superintendent registrar may, in the absence of lawful impediment, grant licences for the marriage of the parties—

1. In any registered building within his own district ; and also, when the parties reside in different districts, in any registered building within *either* of such districts (*b*).

2. In a registered building out of his district declared to be the “usual place of worship” of one of the parties, provided it “be situated not more than two miles beyond the limits of the district in which the notice of such marriage has been given” (*c*).

3. In a registered building out of his district, pursuant to a notice of marriage given under the Act of 3 & 4 Vict. c. 72 (*d*).

4. In the register office of his own district ; and also, when the parties reside in different districts, in the register office of either of such districts (*e*).

5. For the marriage of persons being both or either of them members of the Society of Friends, or if not members, being in profession with, or of the persuasion of the society, or authorized by its rules to marry according to its usages, in a meeting-house of the Society (*f*).

6. For the marriage of persons both of whom pro-

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(*a*) 6 & 7 Will. 4, c. 85, s. 15.

(*b*) 19 & 20 Vict. c. 119, ss. 6 & 9. (*c*) *Ib.* s. 14.

(*d*) *Ib.* s. 13.

(*e*) *Ib.* s. 21.

(*f*) *Ib.* s. 21 ; 35 Vict. c. 10.

fess the Jewish religion, to be celebrated according to the usages of the Jews, in a synagogue, or in a private dwelling house (*g*).

A superintendent registrar has no authority to grant a licence for marriage in any other place, or under any other circumstances, than those above-mentioned. He is expressly restrained by sect. 11 of 6 & 7 Will. 4, c. 85, from granting any licence for marriage to be solemnized in any church or chapel of the Church of England (*h*).

*Cost of marriage licence.*] For every licence granted by the superintendent registrar, he is entitled to the following fees :—

	£	s.	d.
For entering the notice . . .	0	1	0
For issuing the certificate . . .	0	1	0
For the licence . . .	1	10	0
Stamp duty on declaration in notice . . .	2s.	6d.	} 0 12 6
On licence ( <i>i</i> ) . . .	10s.	0d.	
Making together . . .	2	4	6

*Previous residence necessary for licence.*] In order to obtain a licence *one of the parties* must have had his or her “usual place of abode and residence”—that is, must have “dwelt, inhabited, or lodged”—for the space of *fifteen* days immediately before the giving of

(*g*) 19 & 20 Vict. c. 119, s. 21.

(*h*) 6 & 7 Will. 4, c. 85, s. 11.

(*i*) Stamped forms for Notice of Marriage by Licence and Licences may be obtained at the Inland Revenue Office, Somerset House, London, and from the distributors of stamps in the country.



the notice, within the district of the superintendent registrar to whom such notice is given. With respect to the other party, a previous residence of fixed duration is unnecessary; it is sufficient if such party be actually dwelling (in the abode stated in the notice) within a district in England at the time the notice is given. When the parties dwell in different districts, it is not requisite to state in the notice how long each of the parties has resided in his or her "dwelling-place, but only how long the party residing in the district in which the notice is given has so resided" (a). We have already seen that a solemn declaration is required that one of the parties hath for the space of fifteen days immediately preceding the giving of such notice had his or her usual place of abode and residence within the district of the superintendent registrar to whom the notice is given (b).

The residence within the district during the fifteen days must be *bonâ fide*, and in the main continuous. To hire a lodging without making it the *usual* place of abode of the party during the requisite period, would not be a sufficient residence. Where, however, a party has unquestionably a usual place of abode within the district—as in the case of a lady living with her parents—the declaration as to residence might be made even if such party were temporarily absent during a portion of the stated period; there would be a constructive residence, and an undoubted "place of abode" within the district sufficient to satisfy the statute.

After any marriage has been solemnized, proof of previous residence within the district stated in the

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(a) 19 & 20 Vict. c. 119, s. 6.

(b) *Ib.* s. 2.

notice is not necessary, nor can any evidence to prove a non-observance of the statute in this particular be given in any legal proceedings touching the validity of such marriage (c).

SECT. 8.—ON FORBIDDING THE ISSUE OF THE CERTIFICATE.—CAVEAT.

In addition to the solemn declaration which is annexed to the marriage notice, with the penalties of perjury for declaring that which is false, the law provides other means for preventing improper marriages after notice given; namely, by forbidding the issue of the certificate, and by entering a caveat.

*Forbidding the issue of the certificate.*] Any person "authorized in that behalf" may forbid the issue of the certificate by writing at any time after the entry of the notice the word "forbidden" opposite to the entry in the *Marriage Notice Book*, and by subscribing thereto his or her name and place of abode, and his or her character by reason of which he or she is so authorized (such as father, mother, guardian); and thereupon the notice and the subsequent proceedings will be utterly void (d). Every person whose consent to a marriage by licence was required when the Act of 6 & 7 Will. 4, c. 85, was passed, is expressly authorized by sect. 10 of that statute to forbid the issue of the

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(c) *Ib.* s. 17.

(d) 6 & 7 Will. 4, c. 85, s. 9. The authorized person repairing to the district register office may demand to inspect the *Marriage Notice Book*, which is to be open at all reasonable times for inspection without fee (s. 5), and may write in the margin opposite to the entry of the notice of the marriage he desires to forbid, as in the following example:—"Forbidden. John Green, Grove Farm, Tunbridge, Kent, the lawful father of Martha Green."

certificate, whether the marriage is intended to be by licence or without licence. Therefore the issue of the certificate may be forbidden by the persons whose consent is required to the marriage of a minor, namely, the lawful *father*, or, if he be dead, the *guardians or guardian* lawfully appointed, or, if there be no such guardians, the lawful *mother*, if unmarried (a). But the authority expressly given to certain persons to forbid the issue of the certificate, is not limited by the terms of the statute to the case of minors only. When banns are published in a church, the congregation at large is addressed in the words "*If any of you know cause or just impediment,*" &c., and any person who alleges and declares any impediment "*why they may not be coupled together in matrimony, by God's laws, or the laws of this realm,*" may forbid the banns. Where, for instance, the banns are published for the (so-called) marriage of a man with his deceased wife's sister, any person in the congregation cognizant of the relationship of the parties may forbid the banns. In like manner, other persons besides those whose consent is required for the marriage of minors, ought to be authorized to "forbid" on lawful grounds the issue of the certificate, when such persons are unwilling or unable to incur the expense of entering a caveat (b). Whether they are so authorized according to a strict construction of the statute or not, the superintendent registrar would not be justified in disregarding the allegation of a lawful impediment; and he ought to

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(a) See Chap. III., *ante*. It would appear that the issue of the certificate must be "forbidden" by the parent or guardian in person, and not by any one on his or her behalf.

(b) For example, if a man who had given notice of marriage had a wife then living, such wife might surely "forbid" the issue of the certificate without being required to enter a caveat at a cost of 5s., which she might be unable to pay.

decline to issue his certificate until, after examining into the matter, he is satisfied that there are no sufficient grounds to obstruct its issue. But whenever issue of the certificate has been *duly* forbidden by any person expressly authorized in that behalf, all the proceedings upon the notice are void, and no marriage can legally take place between the parties named in the notice, even if all objection be withdrawn, until a fresh notice shall have been given; the superintendent registrar has in that case no examination to make into the grounds of the objection, his duty being limited to ascertaining whether the person forbidding was "authorized in that behalf." No fee is payable for forbidding the issue of the certificate.

It will be observed that the right to forbid is limited to persons authorized. Every person who so forbids the issue of the certificate, by falsely representing himself or herself to be a person whose consent to the marriage is required by law, knowing such representation to be false, is liable to the penalties of perjury (c). But this offence is constituted solely with respect to minors not being widowers or widows, as they are the only persons for whose marriage consent is required by law.

*Entering a caveat.*] Any person on payment of five shillings to the superintendent registrar may enter a caveat with him against the grant of a certificate or a licence for marriage. The caveat must be signed by, or on behalf of, the person who enters it, together with his or her place of residence; and the ground of objection on which the caveat is entered must be stated (d).

(c) 19 & 20 Vict. c. 113, s. 13.

(d) The form of caveat prescribed by the Registrar General

This being done, the superintendent registrar must not issue the certificate or grant the licence until he has examined into the matter of the caveat and is satisfied that it ought not to obstruct such certificate or licence, or until the caveat be withdrawn by the party who entered it. In cases of doubt the superintendent registrar may refer the matter of the caveat to the Registrar General, who will decide upon it. Where the superintendent registrar refuses the certificate or licence the person applying for the same has a right of appeal to the Registrar General, who will thereupon either confirm the refusal or direct the grant of the certificate or licence (a).

On a caveat being entered, the course for the superintendent registrar to adopt will be to send a copy of it, or notice of its receipt with a statement of the grounds of objection, to the party who has given notice of the intended marriage against which objection is made; and to require to be informed whether such grounds of objection are admitted or denied, and whether any reason can be stated why, notwithstanding such caveat, a certificate or licence should be granted. If the validity of the objection is denied, he will send a copy of such denial to the party who has entered the caveat, and require to be furnished with any further

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(of which copies are supplied to superintendent registrars) is as follows:—

"To the superintendent registrar of the district of T. Take notice, that the marriage intended to be had between A. B. of T., in the county of *Kent*, and C. D., of S., in the county of *Essex*, ought not to take place, and that a certificate or licence for the solemnization thereof ought not to issue or be granted, because (*here insert the specific grounds of objection to the marriage*) and for the reasons aforesaid this caveat against the issue or grant of such certificate or licence is entered by (*here insert the name, residence, and profession or calling of the person entering the caveat*). Dated this      day of      , 187   ."

(a) 6 & 7 Will. 4, c. 85, s. 13.

statement which can be made to substantiate the objection (b). Should the matter of the caveat be referred to the Registrar General, copies of the notice of marriage, the caveat, and of all letters and depositions relating thereto should be transmitted with the superintendent registrar's observations on the case (c).

Persons vexatiously entering a caveat are liable to costs and damages. By sect. 37 of 6 & 7 Will. 4, c. 85, it is enacted that every person who shall enter a caveat "on grounds which the Registrar General shall declare to be frivolous, and that they ought not to obstruct the grant of the licence, shall be liable for the costs of the proceedings, and for damages to be recovered in a special action upon the case by the party against whose marriage such caveat shall have been entered." The Act of 7 Will. 4 & 1 Vict. c. 22, s. 5, provides further on this subject that for the purpose of enabling any person to recover costs and damages from any person who shall have entered a caveat on frivolous grounds, a copy of the declaration of the Registrar General purporting to be sealed with the seal of the general register office shall be evidence that the Registrar General has declared the caveat to have been entered on frivolous grounds.

#### SECT. 9.—OF THE SOLEMNIZATION OF THE MARRIAGE.

All the preliminary formalities having been complied with, the actual solemnization of the marriage is next to be considered ; and although some of the requirements are the same whether the parties are married in

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(b) The superintendent registrar should of course keep copies of his letters to the parties, and if any statement is made otherwise than by letter, he should preserve a written record of it, causing it to be signed by the deposing party.

(c) Registrar General's Regulations for Superintendent Registrars.

a registered building or in the district register office, it will be convenient to consider incidents connected with each separately.

*Marriage in a registered building.*] Sufficient previous notice of the time and place of the intended marriage should be given to the registrar who is to be present, as well as to the minister, if any, who is to officiate, to enable them punctually to attend. Attention to this point is obviously necessary to prevent delay or possibly disappointment to the parties, and inconvenience to the minister and the registrar (*a*). Moreover, as no marriage can be solemnized in a registered building without the consent of the minister or of one of the trustees, owners, deacons, or managers thereof (*b*), the parties must take the precaution to obtain such previous consent, otherwise the use of the building for the purpose of their marriage may at the last moment be denied to them (*c*).

Assuming the consent, either expressed or implied, of the minister or of one of the trustees or managers of the chapel, in order to constitute a lawful marriage, the following requirements must be strictly attended to :

1. As to the place.—The marriage must be solemnized in the registered building named in the certificate

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(*a*) The registrar is to take with him, in addition to his Register Book, pen and ink ready for writing therein.

(*b*) 19 & 20 Vict. c. 119, s. 10.

(*c*) Should such a case occur, it would be the duty of the Registrar to inform the parties that under the circumstances their marriage must be postponed, since on no account would the employment of force be justifiable to gain an entrance into the building ; and that the requisite consent being refused, the only course open to them would be to take the necessary steps to have their marriage celebrated elsewhere under a fresh notice.

or licence, and in no other place. This is of great importance, because if persons knowingly intermarry in any place other than that specified in the notice and certificate, the marriage is null and void (*d*). The doors of the building must be open so that the public may enter.

2. As to the time.—The marriage must be solemnized between the hours of eight and twelve in the forenoon (*e*) ; also within three calendar months from the day on which the notice was entered by the superintendent registrar (*f*).

3. As to the form and manner of the marriage.—Some registrar of marriages (or deputy registrar) of the district in which the registered building is situate, and two or more credible witnesses, besides the minister (if any), must be present (*e*).

The registrar will in the first place require that the licence, if the marriage be by licence, or, if the marriage be without licence, the certificate (*i.e.* if the parties dwell in the same district, but if in different districts, then that both the certificates) be delivered to him (*g*) ; which being done, he will examine such licence or certificate to see that it is duly signed by the superintendent registrar (or his deputy), and that it contains the names of the parties then appearing in order to be married (*h*), as well as the name of the place of worship

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(*d*) 6 & 7 Will. 4, c. 85, s. 42. (*e*) *Ib.* s. 20.

(*f*) *Ib.* s. 15. Neither the presence of a minister, nor a religious ceremony is essential to the legal celebration of a marriage in a "registered building" ; they are, however, rarely wanting, and are naturally often made a condition of consent to the parties being married in a place of religious worship.

(*g*) *Ib.* s. 16.

(*h*) The registrar should inquire of the parties whether their *full names* are correctly stated in the licence or certificate ; and should any errors or discrepancies be discovered, he should be guided by the rules prescribed by the Registrar General in such cases.



in which the marriage is to be solemnized. It is the duty of the registrar to retain in his custody and preserve amongst his official papers all licences and certificates, which are his authority for being present at and registering the marriages.

The registrar will then allow the marriage to be solemnized according to such form, rite, or ceremony as the parties may see fit to adopt; with this he will not interfere further than to take care that in some part of the ceremony, and in his presence as registrar and in that of the witnesses, each of the parties declares as follows :

"I do solemnly declare, that I know not of any lawful impediment why I, A. B. [*naming himself or herself*] may not be joined in matrimony to C. D." [*naming the other party*].

Also that each of the parties shall say to the other,

"I call upon these persons here present to witness that I, A. B. [*naming himself or herself*] do take thee C. D. [*naming the other party*] to be my lawful wedded wife [*or husband*]." (a).

If this solemn declaration and form of words, or either of them, be omitted from the ceremony it will not be a marriage, and the registrar is instructed not on any account to register as a marriage any ceremony in which those words have been omitted.

If one or both of the parties shall be Welsh and unable to speak English, the authorized translation of the foregoing form of words into Welsh furnished by the Registrar General to registrars of marriages where the Welsh tongue is commonly used, is to be

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(a) 6 & 7 Will. 4, c. 85, s. 20.. The statutory words may be repeated by the parties after either the minister or the registrar.

employed instead of the prescribed English words (*b*). While the registrar is in nowise concerned with respect to any other form of words which the parties or the minister or other persons shall with their consent think proper to use, he must require that, before the conclusion of the ceremony, the words above mentioned (or the authorized Welsh translation) shall be used (*c*).

4. Registration.—The marriage being solemnized, the registrar must immediately afterwards, in some part of the building, register the marriage in the proper form; and every entry in the Marriage Register Book must be signed by him, by the minister (if any), by the parties married, and by two witnesses at least (*d*). [Detailed instructions for the proper legal registration of marriages will be found in chapter vi. of this work.]

5. Fees.—For attending at, and registering the marriage, the registrar is entitled,—for every marriage by licence to a fee of 10s.; and for every marriage by certificate without licence, a fee of 5s. (*e*). The fee payable to the officiating minister depends upon custom, or upon the rules in force in the different religious bodies: a small fee is usually given to, but not demanded by, the chapel-keeper for his trouble.

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(*b*) 7 Will. 4 & 1 Vict. c. 22, s. 23. For the authorized translation to be used, instead of the English words, where the Welsh tongue is commonly used or preferred, see Appendix.

(*c*) Registrar General's Regulations for Registrars of Marriages, p. 6. In Roman Catholic places of worship the registrar is authorized to permit the ceremony to be completed in the vestry or sacristy. See p. 198, *post*.

(*d*) 6 & 7 Will. 4, c. 85, s. 23.

(*e*) *Ib.* s. 22. Unless the parties about to be married are prepared beforehand with the amount of the registrar's fee, they have no right to expect his services upon the occasion.

*Marriage in the district register office.*] Persons who object to marry in a place of worship, or who for any other reason desire to marry according to a civil or secular form (with or without a subsequent religious ceremony) may, after due notice and certificate or licence issued, contract and celebrate marriage at the district register office, in the presence of the superintendent registrar and of some registrar of marriages acting for the district, and in the presence of two witnesses. The marriage must be solemnized with open doors, between the hours of eight and twelve in the forenoon; and each of the parties must, in the presence of the superintendent registrar, registrar, and witnesses, make the declaration and use the form of words provided in the 20th section of 6 & 7 Will. 4, c. 85 (a).

The proceedings with respect to marriages at the district register office differ from those in registered buildings chiefly in the absence of a religious ceremony or service. The contract, although widely different from an ordinary civil contract, is entered into between the parties by a civil form; and it is expressly enjoined by statute that at no marriage solemnized at the register office of any district shall any religious service be used (b).

After the interchange of the words of present consent and contract the marriage is complete, and it

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(a) The form of words may be uttered for the parties to repeat after him either by the superintendent registrar or the registrar, as may be arranged between those officers.

(b) 19 & 20 Vict. c. 119, s. 12. The marriage is required to be had with *open doors*, and this should always be attended to; but where it was not proved that the doors were open at the time of celebration, the marriage was held to be good. Where the ceremony of marriage took place at the register office in the presence of the registrar and superintendent registrar, the law would presume in the absence of evidence to the contrary that other statutory requisites were complied with. *Campbell v. Corley*: 28 L. T. R. 109.

must be forthwith registered in the proper form by the registrar, who, as well as the superintendent registrar, the parties married, and the witnesses, must sign the entry in the register book (*c*).

For every marriage solemnized in his presence at the register office, the registrar is entitled to have from the parties married the sum of 10s. if the marriage is by licence, and the sum of 5s. if by certificate. The superintendent registrar, however, whose presence is necessary at every such marriage, and whose signature is required to the entry in the register-book, has no fee whatever assigned to him by the statute—an undoubted injustice to that official, unless it may be concluded that no stated fee is provided in contemplation of voluntary gifts on the part of persons married in his presence (*d*).

*Roman Catholic marriages.*] The rites and forms of marriage in the Roman Catholic Church are nearly identical with those of the Established Church; and essentially the same words of contract are used in the religious rite as those required to be repeated before the registrar. But as it is necessary that the form of words prescribed by the statute shall be repeated by the parties, "in some part of the ceremony," it is the

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(*c*) 6 & 7 Will. 4, c. 85, ss. 21, 23. See *Registration of Marriages*, Chap. vi.

(*d*) In ordinary cases of marriages by certificate, a superintendent registrar for assisting in filling up the marriage notice and acting as attesting witness, entering the notice and suspending it in the office, and afterwards issuing the certificate, receives in fees only 2s. In common fairness he should be entitled to a further fee for attending the celebration of the marriage at some hour between 8 and 12 in the forenoon. On another ground the present arrangement is open to objection: marriages cost less in the register office than in a registered place of worship; in the former the cost is 7s. (notice and certificate 2s., registrar, 5s.): in the latter there is the customary fee to the minister, &c., to be paid in addition.

practice for the parties to leave the body of the church, and in the sacristy or vestry, which is always to be considered as part of the "registered building," to complete the ceremony by repeating the statutory words in the presence of the registrar and the witnesses. As this course of proceeding has been sanctioned by the Registrar General, no registrar should hesitate to follow it, without making any objection to the officiating priest (a).

The strictness of the clergy of the Roman Catholic Church in whatever concerns the law of marriage, and the facilities at their disposal for making preliminary inquiries in almost any part of the world, give them advantages in guarding against deception which may usefully be kept in mind by superintendent registrars when receiving notices for the marriage of Roman Catholics in their own churches or chapels. It is stated, however, that when persons of the Roman Catholic religion shun their Church, knowing the facilities which the clergy have for discovering the facts respecting them, and have recourse to the register office or to the Established Church, not improbably some grave impediment, of which one or both the parties are conscious—for example, the having a husband or wife living, it may be, in Ireland, America, or in some distant part of the country—may exist, and their motive in so doing is to escape detection (b).

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(a) Archbishop Manning and the Roman Catholic bishops of England represented to the Marriage Laws Commissioners that "this repetition to the registrar of what has been already declared to the clergyman is apt to have a ludicrous effect, without any comprehensible reason for it." Rep. p. xxvii. The Wesleyan Methodists have introduced the words of the statute in the "form of solemnization of matrimony" used by that body.

(b) Rep. Marr. Laws Comm. Appendix, p. 44. The Roman

In the case of a *mixed* marriage between a Protestant and a Roman Catholic, the usual practice has been for the parties to have the marriage ceremony performed in church according to the rites of the Church of England, and on the same day in a Roman Catholic church—the two ceremonies being regarded as one celebration. In cases of this description, whether the ceremony in the Catholic church precede or follow the ceremony in the Protestant church, all the forms before stated to be essential in the case of other marriages must be observed ; inasmuch as any person knowingly solemnizing a marriage in a Catholic church, either before or after its celebration *in a Protestant church or chapel*, without the production of the superintendent registrar's licence or certificate, or in the absence of a registrar of marriages, would be guilty of felony under sect. 39 of the Act 6 & 7 Wm. 4, c. 85. It is understood, however, that the Roman Catholic clergy now decline to celebrate marriage between a Protestant and a Roman Catholic, unless the parties first solemnly promise that no ceremony shall be performed in a Protestant church.

*Religious ceremony superadded to marriage at the district register office.*] Persons who have been married according to the secular or civil form at the district register office may, if so desirous at any time thereafter, superadd the religious ceremony ordained by the Church or

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Catholic bishops state that the final result of such marriages is this : " On later reflection they do not believe in their marriage ; they know that either legally, spiritually, or on both these grounds, the contract is invalid ; and they either live miserably or separate, or one abandons the other. In such cases it is not an unrare event for one of the parties to emigrate to escape at once the twofold difficulty of the invalid marriage and of the law."

denomination to which they belong. By sect. 12 of 19 & 20 Vict. c. 119, it is enacted that if persons after having contracted marriage at the register office of any district shall desire to add the religious ceremony ordained or used by the Church or persuasion of which they are members, they may apply to a clergyman or minister of such Church or persuasion, and upon the production of their certificate of marriage at the register office, and payment of the customary fees (if any), such clergyman or minister may, if he shall think fit, either by himself, or by some other minister, read and celebrate in the church or chapel the marriage service of the persuasion to which he belongs. But nothing in the reading or celebration of such service is to be held to supersede or invalidate any marriage so previously contracted, nor is such reading or celebration to be entered as a marriage among the marriages in the parish register (a). Nor can a registrar lawfully attend such a reading or service and register it as a marriage.

Except in the particular case thus provided for, any clergyman, Dissenting minister, or other person who, without the requisite authority derived from banns, licence, or certificate of a superintendent registrar, should professedly *re-marry* persons who had already been lawfully married in England in any other place than a district register office, would be guilty of a serious violation of the law.

*Re-marriage after civil marriage in a foreign country.*] Where parties have been married according to the civil form in a foreign country, it is sometimes desired to celebrate their marriage with religious rites in Eng-

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(a) 19 & 20 Vict. c. 119, s. 12.

land,—for instance, in a Roman Catholic church or chapel. In such a case sect. 12 of stat. 19 & 20 Vict. c. 119, providing for a religious service after civil marriage in a *district register office*, will not apply. The circumstance of the parties having been married by the civil form in a foreign country renders a different course necessary. They must give notice to the superintendent registrar in conformity with the statute above-mentioned, and obtain from him a certificate or licence for marriage in the registered place of worship specified in such notice; they must also make the declaration and interchange the words of contract prescribed by sect. 20 of 6 & 7 Will. 4, c. 85, at the time of the re-marriage (*b*). In these cases of re-marriage however, the column headed “condition” in the notice should be filled up thus (or to the like effect):—“Previously married, as alleged, according to the civil form at —, on the —” (inserting place and date of civil marriage); and the woman should be described by her married surname as well as her former (maiden) surname. Without this reference it might in after years be thought that the religious ceremony was the first marriage, and the status of any children born might be questioned.

*Other re-marriages.*] Besides the cases already referred to where the parties being of different religious persuasions usually have their marriage solemnized according to their respective rites on the same day, there are other circumstances under which a re-marriage is sometimes desired for the satisfaction of the parties. Such re-marriages are allowed by the law, and are

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(b) These forms are requisite in order to avoid liability to the heavy penalties imposed on ministers not proceeding in the manner prescribed by law.



indeed desirable where it is considered that the validity of the former marriage might be questioned in consequence of some informality in the proceedings connected with it. At the same time, after children have been born, a re-marriage is often of doubtful expediency, since it may be construed into an admission that the former contract is impeachable if not invalid. In all such cases due notice of marriage must be given, and the licence or certificate of the superintendent registrar obtained; the parties must describe themselves as previously married (mentioning the date and place of the former marriage), and the woman should be described by her husband's surname as well as by her maiden surname.

*Marriage of a registrar of marriages.]* A registrar of marriages would not be justified in performing any of the functions of his office of registrar in connection with his own marriage. He should procure the services of some other registrar of marriages of the district for the occasion. If there be no such registrar, his own deputy may act, the principal being considered absent for all the purposes of his office.

SECT. 10.—OF THE MARRIAGES OF QUAKERS AND  
OF JEWS.

Although there may be little else in common between the Quakers and the Jews, except that both of these well-ordered communities are subject to the general laws of the realm, they have always been associated in their exception from the ordinary operation of the Marriage Acts, which permitted them the enjoyment of their own laws in reference to the matrimonial contract without any interference of the State until

the Act of 1836. By Lord Hardwicke's Act (26 Geo. 2, c. 33) it was provided that nothing therein contained should extend to any marriage amongst the people called Quakers, or amongst persons professing the Jewish religion, where both the parties were Quakers or both Jews. A similar exception is contained in stat. 4 Geo. 4, c. 76. By stat. 6 & 7 Will. 4, c. 85, s. 2, it is enacted that the Society of Friends, commonly called Quakers, and also persons professing the Jewish religion, may continue to contract and solemnize marriages according to their respective usages; and every such marriage is declared and confirmed good in law, provided that the parties be both of the said Society, or both persons professing the Jewish religion; *provided also that due notice shall have been given, and the certificate for the marriage shall have issued, in conformity with the provisions of the Act.*

Under the above enactment Quakers and Jews, upon giving to the superintendent registrar of the district in which they are dwelling the notice prescribed by the Act, and obtaining his certificate, are empowered to contract and solemnize marriage in any place sanctioned by their respective "usages;" and they are not restricted to the district of the superintendent registrar to whom the notice had been given. The Act of 3 & 4 Vict. c. 72 having been passed for the purpose (as recited in the preamble) of restraining marriages out of the district in which one of the parties dwells, except in the special cases therein referred to, the rights of the Quakers and Jews to marry as theretofore were expressly reserved to them by the provision (sect. 5) that the Quakers and Jews might lawfully continue to contract and solemnize marriages according to their respective usages after notice duly given, "notwithstanding the building or

place wherein such marriage may be contracted or solemnized be not situate within the district or either of the districts (as the case may be) in which the parties shall respectively dwell." By the requirement of notice of marriage and of the authority of the civil officer for solemnization, the Quakers and Jews, although following their own rules in other particulars, are brought within the general law applicable to bodies dissenting from the Established Church.

### 1. *The Marriages of Quakers.*

*Notice to be given to the superintendent registrar.]* For marriage, according to the usages of the Society of Friends, or Quakers, due notice must be given to the superintendent-registrar of the district, or each of the districts, in which the parties are residing. The stat. 6 & 7 Will. 4, c. 85, required that the parties "be both of the said Society." This requirement, however, has been modified by subsequent statutes. By 23 Vict. c. 18, it is enacted (sect. 1) that marriages may be contracted and solemnized according to the usages of the Society of Friends in England and Ireland respectively—not only where both parties are of the Society, but "also in cases where one only, or where neither, of the parties to the marriage shall be a member of the Society, provided always that the party or parties who shall not be a member or members of the said Society *shall profess with, or be of the persuasion of the said Society* ; provided also that no person who is not a member of the said Society shall be married according to the usages thereof, unless he or she shall be authorized thereto under or in pursuance of some general rule or rules of the said Society." A copy of the rules purporting to be signed by the Recording Clerk for the

time being of the Society is to be admitted as evidence of such rules in proceedings touching the validity of marriages.

In consequence of a difficulty being felt as to the proper application of the words in the above proviso, requiring those who are not members of the Society "to profess with, or be of the persuasion of the Society," a grievance was felt, now remedied by the 35 Vict. c. 10, which enacts that the former Act (23 Vict. c. 18) shall be construed and take effect as if the words in that proviso were omitted. But no marriage shall be valid under the new enactment, unless when notice thereof is given to the superintendent registrar, a certificate shall be produced to him, purporting to be signed by some registering officer of the Society, to the effect that the party by whom or on whose behalf such notice is given, or each such party (as the case may be) is authorized thereto under some general rule or rules of the Society, and such certificate shall be for all purposes conclusive evidence that the party by whom or on whose behalf such notice is given, or each such party, is duly authorized to proceed to the accomplishment of such marriage according to the usages of the said Society. The register of such marriage, or a copy thereof duly certified according to law, shall be conclusive evidence of the due production of such certificate ; but no certificate shall be required in cases where the party giving such notice shall declare, either verbally or in writing, if thereunto required, that both the parties to the intended marriage are either members of the said Society, or in profession with or of the persuasion thereof.

Therefore, when notice is given for marriage at a Friends' meeting-house, if both the parties are declared to be either members, or in profession with or of the

persuasion, of the Society, the notice will be accepted as heretofore without any corroboration of the statement ; but where both or either of the parties do not fall within this description, the certificate of a registering officer that they are authorized to marry according to the usages of the Society must be produced to the superintendent registrar when the notice is given.

*Marriages may be had by licence or certificate.*] Before the passing of the Act of 19 & 20 Vict. c. 119, persons belonging to, or connected with, the Society of Friends could marry only on the issue of the superintendent registrar's certificate. They were precluded from marrying by licence, because the superintendent registrar could not grant a licence for marriage in any other place than a "registered building," or the district register office—the meeting-houses of the Quakers not being registered buildings. This omission was remedied by the 21st sect. of the above-named statute, which provides that any marriage according to the usages of the Society of Friends may be solemnized by licence granted by the superintendent registrar to whom notice has been given as effectually as if after the issue of a certificate. And further, that the provisions of the Act relating to the solemn declaration, to the statement in the notice, and to the fee and stamp to be paid for the licence, shall be applicable to every marriage to be solemnized by licence according to the usages of the said Society.

*Ceremony of Quakers' marriages.*] The ceremony is attended with much form and solemnity. Previously, at a monthly meeting of the Society where they reside, the parties must present a formal "declaration" of their intention of taking each other as husband and

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wife if the meeting have no material objections against it. The principal conditions of acceptance are the following:—1st. It is a rule that no man propose marriage to a woman without the previous consent of his own and her parents or guardians. 2nd. That the parties be of the same opinion and judgment in religion, although not necessarily professed members of the Society. 3rd. That none shall marry within such degrees of consanguinity or affinity as are forbidden by the law of God. And 4th, That if either party has given scandal or offence to their friends, it shall be acknowledged. If no objections are then made, notice of the intended marriage is published in the meetings to which the man and the woman belong. The parties are required to attend a second time at the monthly meeting, when the persons appointed to make inquiry concerning them return and give the answer, which, if found satisfactory, a certificate is given by the clerk of the meeting liberating the parties to solemnize their marriage. The celebration is in the ordinary meeting on a week-day, usually Thursdays. Towards the conclusion of the meeting the parties stand up, and, taking each other by the hand, the man declares in a solemn manner to this effect:—"Friends, I take this my friend C. D. to be my wife, promising, through Divine assistance, to be unto her a loving and faithful husband, until it shall please the Lord by death to separate us." The woman then makes her declaration. After this a certificate of the marriage is read and signed, and the registration having been completed, the parties leave the meeting-house without any further solemnity (a).

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(a) See Appendix, No. vii. *post*. The ceremony may take place in any meeting-house and at any hour sanctioned by the usages of the Society.

The validity of the marriages of Quakers is said not to have come in question in England in any case since the passing of the first Marriage Act. "This has probably arisen," says a learned writer (a), "from their prudent and peaceful habits, and, perhaps, partly from the circumstance of its not being either the interest of any members of their own families, or the disposition of the Crown, to raise the objection." But, as contracts of marriage unattended with any religious ceremony are now recognized and provided for by the law, it may be presumed that questions affecting the validity of marriages purporting to be solemnized according to the usages of the Society of Friends are little likely to arise. Nevertheless, it is an unsatisfactory state of the law which, in consequence of these usages being referred to by the statutes as the rules of lawful solemnization, renders the validity of marriages liable to be questioned on account of an alleged non-observance of the usages in some particular.

*Registration of Quakers' marriages.*] For the registration of marriages solemnized according to the usages of the Society of Friends, the Registrar General is to furnish to every person whom the recording clerk of the Society at their central office in London shall from time to time certify under his hand to be a registering officer in England of the Society, a sufficient number in duplicate of Marriage Register Books, and also forms for certified copies of the entries made in such books (b). These registering officers so certified to the Registrar General supply the place of registrars of marriages, except that their presence is not necessary to the valid-

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(a) 2 Roper on "Husband and Wife," by Jacob, 481.

(b) 6 & 7 Will. 4, c. 86, s. 30.

ity of the ceremony. As soon as conveniently may be after the solemnization of any marriage according to the usages of the Quakers in his district, the registering officer, whether he shall or shall not have been present at such marriage, having satisfied himself that the proceedings in relation thereto have been conformable to the usages of the Society of Friends, is required to register or cause to be registered in duplicate in two of the Marriage Register Books furnished by the Registrar General, the several particulars relating to that marriage according to the form of Schedule C annexed to the Registration Act. And every such entry must be signed by the registering officer, by the parties married, and by two witnesses; and the entries must be made in order from the beginning to the end of each register book, and the number of the place of entry shall be the same in each of the books (c). As the registering officer is to satisfy himself in every case that the proceedings have been in conformity with the usages of the Society, it appears very desirable that he shall always be present at the ceremony.

It is the duty of the registering officer to keep the Marriage Register Books safely until the same are filled; and, when filled, one copy of every such register book is to be delivered to the superintendent registrar of the district which shall have been assigned to such registering officer, and the other copy is to remain under the care of the Society, to be kept with their other registers and records, being deemed for the purposes of the Registration Act to be still in the keeping of the registering officer for the time being (d).

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(c) *Ib.* s. 31. It will be observed that these marriages are to be registered "as soon as conveniently may be after the solemnization"; not "immediately after," as in all other cases.

(d) *Ib.* s. 33.



*Certified copies of registers to be delivered quarterly to the superintendent registrar.*] By sect. 33 of the Registration Act, every registering officer of Quakers is required in the months of April, July, October, and January respectively, to make and deliver to the superintendent registrar of the district which may be assigned to him, on durable materials (the forms for the purpose being furnished by the Registrar General as already stated) a true copy certified by him under his hand of all the entries made in his Marriage Register Books during the past three months, or a certificate of no marriage if there shall have been no entries made therein since the last copies were delivered. And by the amending Act, such certified copies or certificates of no marriage are to refer to the three months ending on the last days of March, June, September, and December then next preceding (a). No payment is assigned by the statute for making these certified copies.

Every person who is required to make and deliver to any superintendent registrar a certified copy of the entries of marriages registered by him, or a certificate of no registry, and who, after being duly required to deliver such certified copy or certificate, refuses or during one month neglects so to do, is liable for every such offence to forfeit a sum not exceeding 10*l.* (b).

## 2. *The Marriages of Jews.*

Subject to the provisions of the recent statutes relating to marriages and prohibited degrees, the Matrimonial Law of England for the Jews consists of their

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(a) 7 Will. 4 & 1 Vict. c. 22. At the time appointed after the end of each quarter, the superintendent registrar is to send all the certified copies delivered to him to the Registrar General.

(b) *Ib.* s. 28.

own laws or usages. Every marriage contracted and solemnized according to the usages of persons professing the Jewish religion is good in law provided that the parties are both persons professing that religion ; and provided also, that due notice to the superintendent registrar shall have been given and his certificate shall have been issued for the marriage (c).

The Rev. Dr. Adler, Chief Rabbi, stated to the Marriage Laws Commissioners in 1866, his views on the constitution of the matrimonial contract among the Jews in the following terms (d) :—

“The Act [6 & 7 Will. 4, c. 86] provides that every secretary shall satisfy himself that the proceedings in relation to a marriage solemnized between two persons professing the Jewish religion, of whom the husband belongs to his synagogue, have been conformable to the usages of the Jewish religion. Now, according to the Jewish religion, the marriage is not merely a civil contract, but bears an essentially religious character. From Genesis ii., v. 18, where it is declared, that God institutes matrimony, down to Malachi, c. ii., v. 14, where we read that ‘God is witness between man and the wife of his youth,’ the idea runs throughout Scriptures, that wedlock is based upon religion. Now, in order to render the marriage normal and valid according to Jewish laws, the following is required :—

“1. That it be fully ascertained that the persons between whom the marriage is to be contracted do not stand within the degrees of consanguinity or affinity prohibited by the Jewish laws and the law of the land.

“2. *Evidence is needed that both the parties are Jews.*

“3. In the case of a widow or a widower, who are about to be married, convincing proof of the death of the former husband or wife is required.

“4. Two fit and proper witnesses must be present during the solemnization of the marriage and attest the same.

“5. The religious ceremony consists :—

“(A). Of the putting of the ring on the finger of the bride by the bridegroom, while pronouncing the words, ‘Thou art wedded unto me according to the law of Moses and Israel.’

“(B). The pronouncing of the benediction by the minister before and after the marriage vow (alluded to in Genesis, c. xxiv., v. 60, and Ruth, c. iv., v. 11, 12.)

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(c) 6 & 7 Will. 4, c. 85, s. 2.

(d) Rep. Marr. Law Comm. Appendix, p. 45.

"(C). The publication of the marriage contract (alluded to in Tobit, c. vii., v. 13, 14).

"Hitherto all these conditions (involving the necessary investigations and observances) which are indispensable for the marriage being conformable to the usages of the Jewish religion, have been duly fulfilled, as the secretary of the synagogue has stood directly under the control of the authorities. Should this control be withdrawn, there will be no guarantee that the marriage takes place in conformity to the usages of the Jewish religion, as required by the Act of Parliament."

Formerly Jewish marriages had to be proved in the same way as foreign laws are proved in this country (a). As the secretary of the synagogue is now to satisfy himself that the proceedings have been in conformity with the usages of the Jews, it may be presumed that the care taken to ensure a compliance with all the necessary observances will render it unlikely that any questions affecting the validity of a Jewish marriage will be raised (b).

*Certifying the secretaries of synagogues.*] The duty of recording Jewish marriages, and of ascertaining that the proceedings relating thereto have been conformable to the usages of the Jews, devolves upon the secretary of the synagogue to which the husband belongs; and to every person whom the president for the time being of the London Committee of Deputies of the British

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(a) Two well-known cases of disputed marriage had to be proved by professors of the Jewish ecclesiastical law. *Lindo v. Belisario*: 1 Hagg. Cons. R. 248; *Goldsmid v. Broner*: 1 Hagg. Cons. R. 324.

(b) The onus of proof is thrown on those who seek to disturb the general reputation and presumption of marriage. Where a Jew and a Christian woman had cohabited as man and wife during twenty-eight years, and during that period several children were born and were registered as born in wedlock, although no evidence was produced that a marriage had been solemnized, the Court held that the children were entitled to share a fund in Court. *Goodman v. Goodman*, 33 L. T. 70, Ch. Appeal.

Jews shall from time to time certify in writing under his hand to the Registrar General to be the secretary of a synagogue in England of persons professing the Jewish religion, duplicate marriage register books and forms for certified copies thereof are to be furnished by the Registrar General (c). Since the Act of 1856, however, the board of deputies has not been the sole authority for certifying secretaries of synagogues. Twenty householders professing the Jewish religion, and being members of the West London synagogue of British Jews, are empowered to certify in writing under their hands to the Registrar General a person to be secretary of that synagogue; to whom, and to every person whom such secretary shall in like manner certify to be the secretary of some other synagogue of not less than twenty householders professing the Jewish religion and being in connection with the West London synagogue, and having been established for not less than one year, the Registrar General is to furnish duplicate marriage register books and forms for certified copies thereof. Every secretary of a synagogue, to whom the register books and forms are thus furnished, is to perform the same duties in relation to the *registration* of marriages between persons professing the Jewish religion, as under the Registration Act of 1836 are to be performed by secretaries of synagogues (d).

The chief rabbi considers that any extension of these provisions would be injudicious and contrary to the wishes of the great majority of Jews in the kingdom. He states that the board of deputies

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(c) 6 & 7 Will. 4, c. 86, s. 30.

(d) 19 & 20 Vict. c. 119, s. 22. The sect. does not contain the provision in the former statute that the secretary is to satisfy himself as to the observance of the "usages."

naturally possesses better opportunities for becoming acquainted with the personal character, attainments, and diligence of the secretary of each synagogue; and as annual returns are required from each of the synagogues, a due supervision is maintained over the registration, and the occurrence of irregularities prevented. As the Act requires a "synagogue," the board has hitherto been made acquainted by the chief rabbi whether a congregation possessed a real Jewish synagogue or not (a).

The Marriage Laws Commissioners are of opinion that it would be proper to give to all synagogues of persons professing the Jewish religion in the United Kingdom, whether separatists from other synagogues or not, the same means of obtaining State recognition for their secretaries which are given to other congregations of Nonconformists desirous of having their places of worship registered for the solemnization of marriage (b).

*Jewish marriages may be had by certificate or licence after due notice.*] When persons, both of whom profess the Jewish religion, desire to be married by certificate, notice must be given to the superintendent registrar of the district in which they reside (or if they reside in different districts, to the superintendent registrar of each district) in the manner already described, and after an interval of twenty-one clear days the certificate or certificates may be issued for the marriage according to the usages of the Jews in a private house or in the synagogue. In case the mar-

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(a) Rep. Marr. Law Comm. Appendix, p. 45.

(b) *Ib.* p. xxxvii. These views have, however, been opposed by the Board of Deputies of British Jews, by whom it has been shown that cogent reasons exist for not altering the existing law.

riage is intended to be had by licence, notice must be given to a superintendent registrar, in whose district one of the parties has dwelt during the fifteen preceding days, and on the second day after the day of the entry of the notice a licence may be granted (c).

*Registration of Jewish marriages.*] Every secretary of a synagogue immediately after every marriage solemnized between any two persons professing the Jewish religion, *of whom the husband shall belong to the synagogue whereof he is secretary*, is required to register or cause to be registered in duplicate in two of the marriage register books furnished by the Registrar General the several particulars relating to that marriage according to the form of Schedule C. annexed to the Registration Act ; and every such secretary, whether he shall or shall not be present at such marriage, is to satisfy himself that the proceedings in relation thereto have been conformable to the usages of persons professing the Jewish religion (d). Every such entry must be signed by the secretary of the synagogue, by the parties married, and by two witnesses, and must be made in order from the beginning to the end of each book ; moreover, the number of the place of entry in each book must agree (e).

From the enactment it is clear that the secretary of a synagogue to which the husband belongs—that is, of the congregation of which he is a member—is the only person legally authorized to register a Jewish marriage ; and where the intended husband lives at a

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(c) 19 & 20 Vict. c. 119, s. 21.

(d) The secretary would of course satisfy himself on this head before registering the marriage, although this [is not expressed in the Act.

(e) 6 & 7 Will. 4, c. 86, s. 31.

distance (say at Leeds when the parties are to be married at Exeter, where the intended wife resides) the registration of the marriage might be attended with inconvenience and expense, especially as the rules of the Jewish community require the presence of the secretary of the husband's synagogue at the marriage in order that he may satisfy himself that all the observances have been duly attended to. In practice however the difficulty is easily removed by the intended husband qualifying himself as a member of the congregation by becoming a seat-holder, paying such a sum for his seat as the governing body of the synagogue may think reasonable and proper. This payment is sometimes looked upon as a grievance; the remedy would be by providing that the marriage of persons of the Jewish persuasion might be registered by the secretary of the synagogue to which either of the parties should belong.

Although every Jewish marriage is to be registered "immediately after" it is solemnized, the presence of the secretary of the synagogue is not essential to the validity of the ceremony; this is clearly to be inferred from the language of the statute referring to the secretary—"whether he shall or shall not be present at such marriage;" and this inference is further supported by the direction that he "shall register or *cause* to be registered" the several particulars, so that the registration may in his absence be effected by a person deputed by him, although the entry is to be signed by the secretary.

The marriage register books are to be kept safely by the secretary until filled; then one copy is to be delivered to the superintendent registrar of the district assigned to such secretary, and the other copy is to remain under the care of the persons professing the

Jewish religion to be kept with their other registers and records, and to be deemed to be in the keeping of the secretary for the time being (a).

*Certified copies of registers to be delivered quarterly to the superintendent registrar.]* In the months of April, July, October, and January, every secretary of a synagogue is to make and deliver to the superintendent registrar of the district assigned to him, on the forms furnished by the Registrar General, certified copies of all entries made in his marriage register books during the past three months, or a certificate of no marriage, if no entries have been made therein since the last return (b). The copies or certificates are to refer to the three months ending on the last days of March, June, September, and December next preceding. The copies are to be delivered under a penalty not exceeding 10*l.* for default.

*Marriages allowed by the Jewish religion.]* By the Jewish religion marriages are allowed within certain degrees of consanguinity and affinity prohibited by the English law ; namely,

<i>A man may marry</i>	<i>A woman may marry</i>
His wife's sister after his wife's death, brother's daughter, sister's daughter, brother's son's wife, sister's son's wife, wife's brother's daughter, wife's sister's daughter.	Her father's brother, mother's brother, father's sister's husband, mother's sister's husband, husband's father's or mother's brother, sister's husband.

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(a) 6 & 7 Will. 4, c. 86, s. 33. (b) 6 & 7 Will. 4, c. 86, s. 33.



On the other hand there are some marriages permitted by the canon law of England but which are prohibited amongst the Jews; this is especially the case with respect to the marriage of a "Cohen," or descendant in the male line from Aaron the high-priest, including persons whose progenitors have filled the priestly office. Since the passing of Lord Lyndhurst's Act (5 & 6 Will. 4, c. 54) all marriages thereafter between persons within the prohibited degrees are absolutely null and void. But it has been contended that Jewish marriages are protected by the express words of sect. 2 of 6 & 7 Will. 4, c. 85, and of sect. 5 of 3 & 4 Vict. c. 72, which permit persons professing the Jewish religion to "contract" as well as to "solemnize" marriage according to their usages; and that as these statutes were passed subsequently to 5 & 6 Will. 4, c. 54, they have rendered the provisions of that statute inoperative with regard to Jewish marriages. That marriages which would be invalid if now had in England between Christians, as being within the prohibited degrees, but which are permitted by Jewish ecclesiastical law, ought to be recognized as valid when both the parties are of that religion, may, or may not, have been the intention of the legislature; but nothing short of the clearest statutory provision to that effect would justify the conclusion that Jewish marriages are to be excepted from the operation of Lord Lyndhurst's Act (a).

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(a) Whether marriages of Jews are within the above Act, must be regarded as still admitting of some doubts. In June, 1837, a bill was introduced in the House of Commons for removing such doubts, *but it did not pass*. It proposed to enact that no marriage already or thereafter to be celebrated between persons of the Jewish religion should be impeached or rendered void or voidable by reason of consanguinity or affinity, unless the same be within the degrees prohibited by the Mosaic law, according

In administering the new Marriage Acts the principle by which the Registrar General and his officers throughout England are governed is to recognise no distinction of sects or persons in the particular referred to. Every superintendent registrar is prohibited from issuing his certificate or licence for any marriage between persons of the Jewish persuasion which would not be allowable as between other members of the community.

*Jewish divorces.*] According to Jewish ecclesiastical law, divorces may be obtained on grounds not recognised by the law of England, such as mutual dislike, incompatibility of temper, &c. To constitute a divorce under the laws and usages of the Jews a written document or bill of divorcement (*b*) must be delivered from the husband to the wife in the presence of the chief rabbi and of ten persons at least. These divorces cannot, however, be recognised in England, for although Jewish marriages have been excepted out of the old Marriage Acts, yet by the law of the land a marriage, whether Jewish or Christian, if once validly contracted, can be dissolved only by a decree of the Divorce Court or by Act of Parliament.

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to its interpretation as received by persons of the said religion the statute 5 & 6 Will. 4, c. 54, or any other Act, rule, or custom of law whatsoever to the contrary notwithstanding.

(*b*) See Matt. v. 31; xix. 7; Mark x. 4; Deut. xxiv.

## CHAPTER VI.

### OF THE REGISTRATION OF MARRIAGES IN ENGLAND.

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#### SECT. 1.—MARRIAGE REGISTER BOOKS KEPT BY CLERGYMEN OF THE ESTABLISHED CHURCH.

WHEN in the reign of Henry VIII. it was enacted that the Church of England should no longer be subject to the Pope, Thomas Cromwell was appointed the king's vicegerent for matters ecclesiastical, and in that capacity issued certain injunctions to the clergy in the year 1538. One of these injunctions ordains that every officiating minister shall keep a book wherein he shall register every marriage, christening, and burial. The keeping of parish registers was enforced by injunctions of Edward VI. and Queen Elizabeth, and also by one of the Canons of 1603. This canon prescribes in what manner entries are to be made in the registers, herein reciting the injunction of 1538, and ordering an

attested copy of the register of each year to be transmitted to the bishop of the diocese or his chancellor, and to be preserved in the bishop's registry (*a*).

Great interruption to the proper keeping of registers arose from the civil wars. In 1653 Parliament adopted an Act which treated marriage as a civil contract to be solemnized before a justice of the peace, and directed that for the entry of all marriages, births, and burials "an able and honest person" should be chosen by the inhabitants of every parish. This officer, it provided, should have the keeping of the register book, and should be paid 12*d.* for every entry of marriage, and 4*d.* for every entry of birth and burial (*b*). In the reign of William III. Acts were passed to enforce a registry of marriages, births, and burials as a source of revenue to the State. By the 6 & 7 Will. 3, c. 6 (1694), "granting to his Majesty certain rates and duties upon marriages, births, and burials, and upon bachelors and widowers," &c., the clergy were compelled, under a penalty of £100 for neglect, to make the entries, and the tax-collectors were to have free access to the registers without fee or reward (*c*). The 4th Anne, c. 12, recites that many of the clergy, not being sufficiently apprised of the full import of the Act of 6 & 7 Will. 3, had incurred the penalties thereof whereby they and their families remained exposed to ruin; and it directs that they should be indemnified,

(*a*) Canon 70. It contained a retrospective clause appointing that the ancient registers should be copied into a parchment book; by this wise regulation many of the parish registers now extant commence with the reign of Elizabeth, and some as far back as 1538. Rickman's Preface to Pop. Ret. 1831.

(*b*) See Appendix to Rep. on Parochial Registration, 1833; Scobell's Acts, fol. 1658, p. 236.

(*c*) The duties for marriages were for every person 2*s.* 6*d.*, for a duke 50*l.*, a marquess 40*l.*, earl 30*l.*, and so forth.

provided the duty for every marriage, &c., should be paid to the collector of the duties (a).

By the Marriage Act of 1753 (Lord Hardwicke's) a formula for the registration of marriages was prescribed, and the clergyman was required to make, immediately after the ceremony, an entry in the form set forth. The stat. 52 Geo. 3, c. 146, commonly called Sir George Rose's Act, was passed in 1812 for the better regulating and preserving parish registers, but the provisions of this Act, as well as of the 4 Geo. 4, c. 76, so far as they relate to the registration of marriages, have been repealed (b).

All marriages celebrated in England by English law are now to be registered according to the provisions of the Acts of 6 & 7 Will. 4, cc. 85, 86, and the Acts amending the same.

*Supply of register books and forms.*] For the registration of marriages by the Established Church the Registrar General is to furnish, or cause to be furnished, to the rector, vicar, or curate of every church and chapel in England, wherein marriages may lawfully be solemnized, a sufficient number of duplicate marriage register books and forms for certified copies thereof (c). These books and forms are furnished from time to time without charge to the rector or officiating

(a) For an account of the Parochial Registers, see *Hist. of Parish Registers*, 2nd ed., by J. S. Burn: Edinb. Encycl., 19th ed.; Art. Registration, by the present writer.

(b) 6 & 7 Will. 4, c. 86, s. 1. The registration of baptisms and burials, as prescribed by 52 Geo. 3, c. 146, is not affected (s. 49).

(c) 6 & 7 Will. 4, c. 86, s. 30; the provision in this section as to the payment of the cost of the books by the churchwardens, &c., is repealed by 21 & 22 Vict. c. 25, s. 6. Certificates of *non-registry* of marriage are also furnished; but banns books and forms of marriage certificates given by the clergy to the public, are not supplied by the Registrar General.

minister, upon his application through the post to the Registrar General. In the case of new churches, proof is required that marriages may lawfully be solemnized therein, before the register books are furnished.

*Mode in which marriages are to be registered.*] The 31st sect. of the 6 & 7 Will. 4, c. 86, directs that every clergyman of the Church of England, immediately after every office of matrimony solemnized by him, shall register in duplicate in two of the marriage register books the several particulars relating to that marriage according to the form of Schedule C., annexed to the Act; and that every entry shall be signed by the clergyman, by the parties married, and by two witnesses, and be made in order from the beginning to the end of each book, and that the number of the place of entry in each duplicate marriage register book shall be the same.

With regard to the registration of church marriages *in duplicate*, the Registrar General has expressed an opinion that the clergy should be relieved of so troublesome a duty. When there are several marriages in a church on one morning, there is great difficulty in obtaining the signatures of the parties married and witnesses—four in number at least—to the register books; and as certified copies of all entries are made quarterly, there is no advantage from registering in duplicate.

The following is an example of the manner in which marriages should be registered :—

1872.—MARRIAGE solemnized at the <i>Parish Church</i> in the <i>Parish of Marylebone</i> , in the County of <i>Middlesex</i> .								
No	When Married.	Name and Sur- name.	Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.	Rank or Profession of Father
1	17 March, 1872.	<i>William Hastings.</i> <i>Sophia Anna Mitchell.</i>	24 years, 20 years.	<i>Bachelor.</i> <i>Spinster.</i>	<i>Grocer.</i>	8, South Street. 17, High Street.	<i>Peter Hastings.</i> <i>Geoffry Mitchell (deceased).</i>	<i>Farmer.</i> <i>Butcher.</i>

Married in the *Parish Church*, according to the rites and ceremonies of the Established Church by *Licence* [or after *Banns*], by me,  
*James Hollingshead, Vicar.*

This Marriage was { *William Hastings,* } in the { *John Hastings.*  
solemnized between us, { *Sophia Ann Mitchell,* } Presence of us, { *Geoffry Mitchell.*

The words and figures in *italics* to be filled in as the case may require.

All the foregoing particulars should, whenever practicable, be ascertained and inserted in their proper places. And it is *absolutely necessary* that every entry should be signed by the clergyman, by the parties married, and by *two* witnesses.

The name of the church and of the parish and county should be inserted in the heading of *each* entry ;

also the date of the year. Every entry should be as complete as if separated from all the rest.

*Name and surname.*—Before filling up this column it is desirable to ask the parties to state their names *in full*, as it often happens that in giving notice for banns one of the Christian names is inadvertently omitted. (Where they are both of the *same surname* inquiries should be made as to their relationship, if any ; but this should be done before the ceremony, in order that the proceedings may be stayed in the event of their being related within the prohibited degrees.) The correct mode of spelling the names should be ascertained ; and the Christian names should be written at full length, initials and abbreviations being avoided. Should it appear, in any case, that the names in which the banns were published were not strictly accurate, the clergyman may, nevertheless, in the absence of all suggestion of fraud or deception, enter the names correctly in the register book (a).

*Age.*—Whenever either of the parties is unwilling or unable to state his or her *precise* age, the words “of full age” or “minor” may be inserted. In the case of young persons, it is always better to ask “What was your age last birthday ?” rather than “Are you of full age ?”

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(a) To give an example of a common case : the banns are out-asked in the names of “John Wood” and “Martha Green ;” when the woman signs, it is found that her signature is “Martha Jane Green,” her true name. The clergyman, on finding that the second Christian name was left out in error when notice for banns was given, may, before signing the entry, insert “Jane” by an interlineation, which should be numbered ; the number of the correction, with his initials, should then be written in the margin.



*Condition.*—Bachelor and spinster are terms to be applied only to those who have not before been married; divorced persons should be specially described (a). A person who re-marries on the presumption of the death of the other spouse, who has not been heard of for seven years, is to be described as “widow” or “widower.”

*Rank or profession.*]—The rank, profession, or calling of the woman, as well as of the man, may be entered in this column.

*Residence at the time of marriage.*]—Following the schedule of the statute, not merely the town or parish, but the name of the street and the number or name of the house (if any) should be inserted. In towns “In this parish” is too vague as a description of the residence. In cases where, after the banns have been published on behalf of a person who was a parishioner, such person has gone to another parish before the wedding, “residence at the time of marriage” may be construed to mean residence at the time of the proceedings leading to the marriage, and not on the actual day of the nuptials; for unless this interpretation be permissible, the clergyman (assuming the other party to be a non-parishioner) might be supposed, on the evidence of his register book, to have improperly married in the parish church two persons not belonging to his parish.

*Father's name and surname.*]—Should the father of either of the parties be dead, the word “deceased” should be inserted after his name and surname, as in

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(a) See *ante*, p. 35.

the example. In the case of persons of illegitimate birth, this column and the next may be left blank. Should there be the slightest hesitation to give the father's name, in order to spare the feelings of the parties the question should not be pressed.

*Authority for the marriage.*]—An ordinary surrogate's or ecclesiastical licence is sometimes erroneously described as "special licence"; the latter description is to be applied only to the *special licence* of the Archbishop of Canterbury, of which less than twenty are usually granted every year at a cost of nearly 30*l.* each. When a marriage is solemnized upon the production of a superintendent registrar's certificate, the words "by" and "or after" should be struck through and the words "*on production of superintendent registrar's certificate*" should be inserted. This document should not be described as "registrar's certificate," or the clergyman will probably be reminded that a registrar has no authority to issue it.

Along the lines following the words "This marriage was solemnized between us," the parties married must (if they can write) sign their names—and it is better that they should do so at full length—the woman signing not her married but her maiden surname, or if she was a widow, her last married surname. Along the lines following the words "in the presence of us," the two witnesses must (if they can write) respectively sign their names. If any of these parties cannot write, they must be desired to make their mark in the usual way, the officiating minister writing after such mark "The mark of ——" (inserting at full length the name and surname of the person).

*Penalty for giving wilfully false information.*] The

authority for asking the particulars required to be entered in the duplicate register books is given by sect. 40 of the Act of 6 & 7 Will. 4, c. 86, which enacts that it shall be lawful for every clergyman of the Church of England, who shall solemnize any marriage in England, to ask of the parties married the several particulars therein required to be registered touching such marriage; and (sect. 41) every person who shall wilfully make or cause to be made for the purpose of being inserted in any register of marriage, any false statement touching any of the particulars therein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury (a).

*Correction of errors.*] No alteration in, or addition to, a marriage register can be lawfully made after the entry has been completed.—Errors in marriage registers may, however, be corrected, within one calendar month after their discovery, in the manner prescribed by the 44th section of the Registration Act, which enacts,—

“That no person charged with the duty of registering any

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(a) At the Central Criminal Court, May, 1871, Samuel Moss was indicted under this section, and sentenced to six months' imprisonment, with hard labour, for causing a false entry to be made in the marriage register of Stepney church, as to the name and age of Sarah Fry, to whom he had been married after banns published upon a false notice given to the parish clerk. The female was only 16 years of age, and both were of the Jewish religion. In another case, Lord Dunboyne was indicted for having, after a marriage in August, 1842, with Mrs. Vaughan, improperly described himself in the register book of St. George, Hanover Square, on a re-marriage with the same lady, seven months afterwards, as a *widower*, and his wife as a *widow*, in contravention of this section. The prosecution was not commenced until 1850. Lord Campbell said it was difficult to say that it was done wilfully and corruptly, and the jury returned a verdict of not guilty. In the first case nullity of marriage was decreed, January, 1873.

\* \* \* \* Marriage who shall discover any error to have been committed in the form or substance of any such entry, shall be therefore liable to any of the penalties aforesaid, if within one calendar month next after the discovery of such error, in the presence \* \* \* \* of the parties married \* \* \* \* or in case of the death or absence of the respective parties aforesaid, then in the presence of the superintendent registrar, and of two other credible witnesses, who shall respectively attest the same, he shall correct the erroneous entry, according to the truth of the case, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made: Provided also that in the case of a marriage register he shall make the like marginal entry, attested in like manner in the duplicate marriage register book, to be made by him as aforesaid, and in every case shall make the like alteration in the certified copy of the register book, to be made by him as aforesaid, or in case such certified copy shall have been already made, provided he shall make and deliver in like manner a separate certified copy of the original erroneous entry, and of the marginal correction therein made." (6 & 7 Will. 4, c. 86, s. 44) (b).

As the terms of this section admit of the correction of "any error" in the form or substance of an entry, the clergy may exercise their judgment and discretion as to the application of this mode of rectifying errors.

The Registrar General has, however, recommended that the clergy should in every case "require satisfactory verbal or written evidence of the existence of an error before they commence any alteration under the provisions of this section." Whenever documentary evidence in proof of an alleged error is obtainable, it is

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(b) This provision for the correction of errors in registers is nearly identical with that contained in the Parish Registers Act of 1812 (s. 15), and the Forgery Act, 11 Geo. 4 & 1 Will. 4, c. 66, s. 21, except that by those statutes the marginal correction in case of the death or absence of the parties was to be made "in the presence of the churchwardens or chapelwardens." The provisions in the first-named Act, so far as they relate to marriages, have been expressly repealed; and sect. 21 of 11 Geo. 4 & 1 Will. 4, c. 66, although it has been excepted from the general repeal of that statute by 24 & 25 Vict. c. 95, must be considered to be virtually repealed as regards marriage registers.

expedient to call for it and to delay making the correction until it is produced. The period of one month "after the discovery of such error," is to be reckoned from the time that the alleged error is made clear and manifest to the person charged with the duty of registering.

As regards the form of marginal note in which such corrections should be made, the following will serve as an example (the error is in a name in col. 7 and in the calling in col. 8) :

Father's Name and Surname.	Rank or Profession of Father.
Peter Hastings.	Farmer.
Geoffry Mitchell (deceased.)	<u>Butcher.</u>

In entry No. 71, col. 7, for "Peter" read "John," and in col. 8, for "Butcher" read "Farmer." Corrected on the 10th April, 1872, by me,

*James Hollingshead*, Vicar.

In the presence of

<i>William Hastings,</i>	} The Parties
<i>Sophia Ann Hastings,</i>	
	Married.

The clergyman should denote the error by making a line with ink under the incorrect word or words.

A certified copy of the original erroneous entry, with the marginal correction, should be forwarded to the Registrar General on an entire leaf of the printed forms; but this copy will not be necessary if the quarterly return of certified copies including the entry in question has not yet been delivered to the registrar.

Before an entry is signed and completed, any error detected on examining it may be corrected by drawing the pen through the erroneous word and writing it correctly, or by interlineation in the case of omitted words; but the corrections thus made by obliteration

should be numbered, and a correction should be inserted in the margin, with the officiating minister.

In the event of any of the spaces for entries having been passed over, lines in ink should be drawn through every such space so that no improper use may be made of it hereafter ; and in the duplicate book similar lines should also be drawn, in order that the numbers of each entry in both books may in future agree, as required by sect. 31 of the Registration Act. It is further advisable that a marginal note be inserted against each of such blank spaces to explain the cause of no entry having been made therein. These lines and notes should be reproduced in the certified copies.

Where the clergy have doubts and scruples as to the correction of alleged errors in the registers, their proper resort, as in other matters, is to the Ordinary through the Chancellor of the diocese, "because his determination in all doubtful cases is authoritative, safe, and legal" (a).

*Where churches are under repair.*] By 4 Geo. 4, c. 76, s. 13, during the repair or rebuilding of a parish church, marriages may be solemnized in the church of an adjoining parish or chapelry. In such a case the marriages from the parish of which the church is under repair or being rebuilt, should be entered in the register books of such parish, and not in those of the adjoining parish or chapelry. The heading of the entry should be modified accordingly : ex. gr. "Marriage solemnized at the parish church in the parish of A (the church of B being under repair)," &c.

*Registration of marriages by special licence.*] When a marriage by special licence has been solemnized in a private house, chapel, or place in which marriages are

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(a) Sharp's Charges on the Rubric.

not usually solemnized, the entry must be made in the marriage registers of the parish in which such place is situated. It is customary for the incumbent of the parish to attend the celebration with the church registers, and to effect the registration.

*Re-marriages.*] Where persons are re-married on account of any informality connected with a former ceremony, they should be described in the column for "Condition" as "previously married, as alleged, on the (the date and place being stated);" and the woman should be described by her married surname with her maiden or former surname added. But where a religious service is superadded to a marriage which has been celebrated according to the civil form at a district register office, the registry of that service as a marriage is a contravention of the law (a).

*Custody of the register books.*] The rector, vicar, or curate of every church and chapel shall keep the duplicate marriage register books safely until the same shall be filled; one of such books shall then be delivered to the superintendent registrar of the district in which such church or chapel may be situated, and the other book shall remain in the keeping of such rector, vicar or curate, to be kept by him with the registers of baptisms and burials of the parish or chapelry within which the marriages registered therein shall have been solemnized (b). The register books of marriages performed in chapels licensed by the bishop are subject to the same provisions (c).

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(a) 19 & 20 Vict. c. 119, s. 12.

(b) 6 & 7 Will. 4, c. 86, s. 33.

(c) 4 Geo. 4, c. 76, s. 5; 6 & 7 Will. 4, c. 85, s. 30.

The marriage register books (like the other parish registers) are deemed to belong to the parish or chapelry, but they are to be kept by and remain in the power and custody of the rector, vicar or other officiating minister, subject to the provision that when filled one of the duplicate books is to be delivered to the superintendent registrar. By the Parish Registers Act, the register books are to be safely and securely kept in a dry well-painted iron chest, to be provided and repaired as occasion may require, at the expense of the parish or chapelry; and the chest is to be constantly kept locked in some dry, safe, and secure place within the usual place of residence of such rector, vicar curate, or officiating minister (if resident within the parish or chapelry) or in the parish church or chapel (*d*). When removed from the chest for the insertion of fresh entries, or for searches, &c., the books are immediately to be replaced in it.

*Quarterly certified copies.*] The 33rd sect. of the Registration Act requires that the rector, vicar, or curate of every church and chapel shall, in the months of April, July, October, and January respectively, make and deliver to the superintendent registrar of the district in which such church or chapel may be situated, a true copy, certified by him under his hand, of all the entries of marriages in his registers since the last certificate, and if there shall have been no marriage entered therein since the last certificate, that he shall certify the fact under his hand. The Act of 1 Vict. c. 22 directs that the certified copies and certificates shall in every case be

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(*d*) 52 Geo. 3, c. 146. Although so far as regards the *registration* of marriages the provisions of this statute are repealed, yet as regards the custody of all the parish registers it may be taken to be still in force.



made up and refer respectively to *the last days* of March, June, September, and December then next preceding : and that it shall be sufficient if such copies and certificates be delivered to a registrar of births and deaths.

In making the copies in the forms provided for the purpose, care should be taken that the copy is a strict and literal transcript of the original, including the number and the heading of each entry. Even if any name shall appear to have been misspelt in the register such misspelling is not to be corrected in the copy, but a faithful transcript must be made. It is essential that the certificate at the foot of *every page* containing a copy should, after the requisite insertions, be signed by the clergyman (*a*), inasmuch as without signature it will not be a certified copy as required by law, nor can it be received as such by the superintendent registrar. Neither can he receive as a certified copy any copy which is not made on one of the forms furnished by the Registrar General for that purpose. Those forms are on paper of a durable kind, having a peculiar water-mark as a safeguard against substitution. Moreover, it is of importance that every leaf should be delivered entire, and without any part of it having been torn or cut. It is also desirable that the leaves should not be soiled, and that they should not be creased by folding more than can be helped.

The registrars are instructed to apply personally for these certified copies and certificates *once* after the end

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(*a*) The following is the form of certificate, the figures and words in italics being filled in as the case may require :—

"I, *William Thompson*, Vicar of *Hansacre*, in the County of *York*, do hereby certify that the foregoing, comprising *two* entries numbered 13, 14, is a true copy of the entries so numbered, made in the marriage register books of the said *Parish*. Witness my hand this *first* day of *October*, 1867.

"*William Thompson*, Vicar."

of each quarter, and trouble will be saved if they are always prepared in readiness for the quarterly visit of the registrar ; but, should it happen that the copies are not then delivered to him when he calls, they should be forwarded to his address, or to that of the superintendent registrar, with the least possible delay.

*Payment to clergymen for the entries in the certified copies.]* The superintendent registrar of the district in which the church or chapel is situated shall pay, or cause to be paid, to the rector, vicar, or curate the sum of sixpence for every entry contained in the certified copies, which sum shall be reimbursed by the guardians of the union or parish (b). It is usual for the superintendent registrar to make this payment for the copies through the registrar who collects them. For a certificate of non-registry the statute provides no payment.

*Penalties.]* Every person who is required to make and deliver to any superintendent registrar a certified copy of the entries of any marriages registered by him, or a certificate of non-registry, who shall refuse, or during one month neglect, so to do, is liable to incur a penalty of 10*l.* upon summary conviction, provided the prosecution be commenced within three months after the commission of the offence (c).

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(b) 7 Will. 4 & 1 Vict. c. 22, s. 27. The instructions of the superintendent registrar do not require him to examine the copies or to notice any informality in them, unless they are not duly certified, in which case he must return them for the clergyman's certificate. When he shall have ascertained the number of entries therein, he is to pay, or cause to be paid, the sum of 6*d.* for every entry.—*Reg. Gen. Regul.*

(c) 7 Will. 4 & 1 Vict. c. 22, ss. 28, 31.

*Searches in the register books, and certified extracts.]*

Every rector, vicar, or curate who shall have the keeping, for the time being, of any register book of marriages shall, at all reasonable times, allow searches to be made of any register book in his keeping, and shall give a certified copy under his hand of any entry in the same on payment of the fee as under :—

For every search extending over a period of not more than one year . . . . 1s. 0d.

and 6d. additional for every additional year.

For every single certificate . . . . 2s. 6d. (a.)

The fee for a search is not payable when the certificate is issued immediately after the entry is made, for in that case no search is requisite (b). But even when a date is given—which may or may not prove to be correct—a fee for the search is payable in addition to the fee for the certificate (c).

*Stamp duty on certificates.]* By the Stamp Act, 1870, it is enacted that on a “copy or extract (certified)

(a) 6 & 7 Will. 4, c. 86, s. 35. The provisions of this section must be held to apply only to registers kept in pursuance of the Act; consequently the fees to which the clergy may be entitled for searches in and extracts from register books of marriages kept prior to July, 1837, must be governed by the previously existing custom.

(b) For certificates taken at the time of the marriage, the fee might well be reduced to 1s., so that amongst the poorer classes the wife might have the “lines” to bring away with her, at a small cost.

(c) Every one who has an interest in the entries contained in the registers has a right to inspect them. The clergyman is not required to make the searches, but only to “allow searches to be made.”

of or from any register of births, baptisms, *marriages*, deaths, or burials," there shall be charged a stamp duty of one penny. The value of the stamp is to be paid by the person requiring the copy or extract, and the stamp "is to be cancelled by the person by whom the copy or extract is signed before he delivers the same out of his hands, custody, or power" (sect. 80). Certified copies of registers of marriages transmitted by clergymen (and others) to the Registrar General are, as hitherto, exempt from this duty.

SECT. 2.—REGISTER BOOKS KEPT BY REGISTRARS OF  
MARRIAGES.

The registrar of marriages, immediately after every marriage solemnized in his presence, is to register the same in a marriage register book, to be furnished to him by the Registrar General according to the form prescribed by the Act 6 & 7 Will. 4, c. 86, and every entry of such marriage is to be signed by the minister by or before whom the marriage shall have been solemnized—if there be any such person—and by the registrar, and also by the persons married, and attested by two witnesses; and every such entry is to be made in order from the beginning to the end of the book (*d*).

The following is an example of the mode of registering marriages :—

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(*d*) 6 & 7 Will. 4, c. 85, s. 23.

1872.—MARRIAGE solemnized at <i>Salem Chapel, George Street, in the District of Lambeth,</i> in the County of <i>Surrey.</i>								
No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
4	Tenth November, 1872.	William Pettit.	31 years.	Bachelor.	Corn Merchant.	4, Chapel Place, Lambeth.	George Pettit.	Miller.
		Maria Jones.	25 years.	Spinster.		31, Bridge Road, Lambeth.	Peter Jones.	Builder.

Married in the *Salem Chapel*, according to the rites and ceremonies of the *Independents*,  
by Licence by me,

*Richard Baxter, Minister.*

*John Richardson, Registrar.*

This Marriage was { *William Pettit* }  
solemnized between us { *Maria Jones,* } Presence of us, { *Peter Jones.*  
*Caroline Jones.*

The words and figures in *italics* to be filled in as the case may require.

According to the Registrar General's regulations for registrars of marriages it is absolutely necessary that all the foregoing particulars be ascertained and inserted in the proper columns, except those relating to the two last respecting the name and rank or profession of the father, which, in the case of persons of illegitimate

birth, cannot always be known. The registrar is enjoined to guard against offence to the feelings of such persons, and he is merely to ask the parties whether they can furnish him with the means of filling them, and if they answer in the negative, he is not to inquire the reason, nor is he to insert any words in explanation of the omission, such as 'not known' or 'information refused,' but to leave the columns blank.

The particulars relating to the parties must be written by the registrar, who will observe the instructions issued by the Registrar General for his guidance; the minister (if any) by or before whom the marriage was solemnized must sign the entry; and from his information the registrar must insert the name of the religious sect or community whose rites or ceremonies have been observed.

The parties married must (if they can write) sign their names at full length in the proper place, the woman inserting not her married but her maiden surname, or if she was a widow, her last married surname. The two witnesses must also (if they can write) respectively write their names and surnames at full length. If any of these persons are unable to write, they must be desired to make their mark, and the registrar must write after such mark "the mark of ——" (inserting at full length the name of the person). Lastly, the registrar must sign the register immediately under the signature of the person by whom the parties were married, inserting after his signature the word "registrar."

If the marriage is not solemnized with any acknowledged rites and ceremonies of any religious sect or community, or at the district register office, the registrar must draw a line through the words "according

to the rites and ceremonies of the "by" and over the last-mentioned word he must write the word "before," making the entry in the following manner : "*before me, John Cox, registrar.*"

The entries are to be made in regular order from No. 1 to the end of the book, and on no account are intervals to be left between the entries ; clear and distinct writing is required, especially with regard to the names, which must be written in such a manner that they may not be mistaken for other similar names. In order to avoid the necessity of subsequent corrections the parties should be asked whether their names, as stated in the certificate or licence, are fully and correctly given. This inquiry should be made previous to the ceremony, and should it be found that such is not the case, if the discrepancy be but slight,—such for instance as the spelling of a name or surname according to the pronunciation instead of according to its strict orthography,—the registrar may allow the marriage to proceed, and fill up the column of the register headed "name and surname" in this manner : "John Wayte, described in the certificate [or licence] as John Wait." Even the omission of a second Christian name, where it has arisen from error or inadvertence, and there is no reason to suspect fraud or deception, is permitted to be rectified in the same manner, thus : "Mary Ann Brown, described in the certificate [or licence] as Mary Brown." But if the discrepancy be of essential importance, such as a total variance between a Christian name or surname as stated by either of the parties, and the name or surname as stated in the licence or certificate, it is the registrar's duty, when the defect is discovered before the ceremony, to stop the proceedings, and to inform the parties

that they must give a fresh and correct notice (a). Where, however, the discovery of the error is not made until after the ceremony is performed the registration must be effected in the manner indicated above.

*Correction of errors.]* Any errors, whether made by the registrar or either of the parties married in signing their names, if discovered *before* the entry has been completed and signed by the registrar, should be corrected by drawing the pen through the erroneous word, and writing the correct word,—or in the case of an omission, by interlineation,—the errors to be numbered in consecutive order from the first in the book to the last, according to the instructions furnished by the Registrar General in that behalf.

Errors discovered *after* the entry has been completed and signed by the registrar, should be corrected under the 44th section of the Registration Act ; but this should not be done when the error exists or is alleged to exist in the *names* of the parties married, or in any of the *signatures* in the entry, without special instructions from the Registrar General. The correction of an error can be made only within one month after its discovery,—that is, after it is made evident to the registrar by clear and satisfactory proof,—by an entry in the margin (without any alteration of the original entry) to be made by the registrar (b), in the presence of the parties married, or in case of their death or absence, in the presence of the superintendent registrar and two other credible witnesses, who must respectively

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(a) Circular letter of Registrar General to registrars of marriages.

(b) Where the registrar who made the entry is dead, or out of office, his successor, or another registrar of marriages for the district, may make the correction.



sign under the signature of the registrar. The date of the marginal correction is always to be inserted (a).

Alleged errors are not to be corrected without satisfactory proof (documentary or otherwise) of their existence; and the matter should be referred to the Registrar General in all cases of doubt, or as already stated, where names and signatures are affected.

If the quarterly certified copies containing the entry have been already made and delivered to the superintendent registrar, a new copy with the marginal correction, duly certified, must be delivered to him, and after certifying it, he will transmit it to the Registrar General.

*Quarterly delivery of certified copies.]* Four times a year, as directed by the printed regulations for his duties, every registrar of marriages must make and deliver to the superintendent registrar of his district, a true copy, duly certified, of all the entries registered by him during the preceding quarter. These copies must be made in the forms furnished for the purpose. If no marriage has been registered by him during the quarter he must deliver a certificate of no registry. The copies must not be soiled; they should be folded in the same manner in which the forms were received from Somerset House; they must be strictly and literally correct, exhibiting faithfully any inaccuracies which may occur in the original; and the certificate at the bottom of every page containing any entry must be filled up in the prescribed manner.

The registrar when he delivers the copies to the

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(a) See a form of marginal correction, *ante* p. 230. The error is to be indicated by drawing a line under the incorrect word or figures.

superintendent registrar must deliver also his register-book from which they are copied, in order that they may be examined and compared. If the superintendent registrar finds them to be correctly made he will certify the same in writing under his hand, and transmit them to the Registrar General. Should any inaccuracies be detected in the copies, the registrar will correct them, if slight ; he will, however, have to furnish a new copy of any leaf containing errors, if required to do so by the superintendent registrar. No fee is provided by the statute for making these copies ; but an allowance at the rate of 1s. per mile (one way) is made to the registrar for the journeys which he will be required to make once a quarter to deliver his certified copies to the superintendent registrar, when the distance from his own house to the district register office is not less than a mile by the nearest public way.

*Searches and certified extracts from registers.]* Every registrar must, at all reasonable times, allow searches to be made in any register-book in his keeping, but only in his presence ; and he must, on demand, give a certificate or copy certified under his hand, and written on forms procured by him at his own expense, of any entry therein. For every search in the register-book in his keeping, when a search is requisite, he will be entitled to receive of the person searching the sum of 1s. if the search extend over a period of not more than a year ; and if for more, then 6d. additional for every additional year (b). For

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(b) When the date is given, it is nevertheless requisite to make a search, and the search fee becomes payable. At Somerset House the payment of a search fee is required, although a date, not always correct, is mentioned.

every single certificate he will be entitled to a fee of 2s. 6d. in addition to the search fee. When a certificate is requested at the time the entry is made (*i. e.* immediately after the marriage) no fee for a search can be demanded. A stamp duty of 1d. is payable on "a copy or extract (certified) of, or from any register of births, baptisms, marriages, deaths, or burials" given to the public; it is denoted by an adhesive stamp (not a postage stamp), which is to be cancelled by the person signing the copy or extract before he delivers the same out of his hands; and the person requiring the copy or extract is to pay the duty. (a). All certified copies of registers transmitted to the Registrar General are exempt from this duty.

*Custody of the register book.*] The registrar shall keep safely each register-book until it shall be filled, and shall then deliver it to the superintendent registrar, to be kept by him with the records of his office (b). The proper time for delivering up a filled register-book is when the certified copies of the last entries therein are made and delivered to the superintendent registrar for examination and transmission to the Registrar General.

Except when actually in use, the register-book is to be kept in the strong iron-box with which every registrar is furnished. The box is to be always left locked; the key must be carefully kept by the registrar; and he must not permit the box to be unlocked except in his presence, unless it be by the superintendent registrar, who has authority to unlock the box.

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(a) Stamp Act, 1870, s. 80.

(b) 6 & 7 Will. 4, c. 85, s. 24.

*Penalties.*] Every registrar refusing or without reasonable cause omitting to register any marriage which he ought to register : and every person having the custody of any register-book, or certified copy thereof, who shall carelessly lose or injure the same, or carelessly allow the same to be injured whilst in his keeping, is liable to incur a penalty of 50*l.* for every such offence (*c*).

A person refusing, and during one month neglecting after having been duly required, to deliver certified copies or nil certificate is liable to a penalty of 10*l.* (*d*).

### SECT. 3.—REGISTERS AS EVIDENCE OF MARRIAGE.

The ecclesiastical and the civil registers, kept in England as described in the preceding section, are receivable in all courts as evidence of marriage, and are by themselves sufficient for the *prima facie* legal proof of its due solemnization. Registration, however, is not essential to the validity of marriages ; for the fact of marriage may be otherwise proved when the circumstances are such as to render the proof admissible, notwithstanding the absence of register evidence.

Since the Act 26 Geo. 2, c. 33, which required a formal registry of every marriage, the proper although not the sole evidence of a marriage is the register-book, or a certified copy of the entry. The registry is sufficient evidence of the time of the marriage, and also, in the absence of proof to the contrary, of a due compliance with all requisite formalities. *Denman*,

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(*c*) 6 & 7 Will. 4, c. 86, s. 42.

(*d*) 7 Will. 4 & 1 Vict. c. 22, s. 28.

C. J., said : "The registry of marriage is evidence in itself, as the clergyman must be present, and it is his duty to enter the marriage correctly, and the fact of the time of marriage is within his own knowledge, and such registry is evidence for the purpose of proving all the facts there stated, which are necessarily within the knowledge of the party making the entry" (a). These remarks apply with equal force to the registry by a civil registrar. If the register is produced for the purpose of identifying the parties to a marriage, their handwriting need not be proved by an attesting witness to the register ; it will be sufficient that a witness proves that he knows the parties and their handwriting (b).

Before the 6 & 7 Will. 4, c. 86, which provided that sealed copies of the certified copies deposited with the Registrar General should be receivable as evidence, it was sufficient *prima facie* evidence of marriage to produce an examined copy of the registry, and prove that the original was in the handwriting of the parties without producing the original itself. As that statute declared that the Registrar General's copy under seal should be received as evidence without further or other proof of the entry, the admissibility of extracts from parish registers purporting to be signed by the incumbent, or from civil registers purporting to be signed by the registrar, was liable to be questioned. It remained for the 14 & 15 Vict. c. 99 to establish as competent evidence a copy certified by the person or "officer" having the proper custody of the original Register Book.

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(a) *Doe dem Wallaston*, 1 Moore and Rob., 386.

(b) *Birt v. Barlow*, Doug. 172, where Lord Mansfield, C.J., says : "parish registers are in the nature of public records, and need not be produced, or proved by subscribing witnesses."

By that statute it is enacted (sect. 14) as follows :—

“Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any court of justice, and before any person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted, and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same.”

It is under this act that a copy or extract purporting to be signed and certified as a true copy, by the rector, vicar, or curate, superintendent registrar, registrar, registering officer of Quakers, or secretary of a Synagogue, having the proper custody of the original, is admissible in evidence. Extracts from parish registers purporting to be signed, some by the “incumbent,” some by the “rector,” some by the “vicar,” and some by the “curate,” of the parishes, were held to be receivable in evidence, the court considering that each incumbent was an “officer to whose custody, &c.,” within the meaning of the act (c). Although since June 1837 the contents of all register books of marriages, whether ecclesiastical or civil, may be proved by the Registrar General’s copies, provided the requisites mentioned in sect. 38 of the Registration Act are complied with, it would seem from the cases cited below, and other judicial decisions, that a copy of such registra-

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(c) *In re Hall’s estate*, 2 De Gex, M. & G. 748; 22 L. J. (ch.) 176; *In re Porter’s trusts*, 2 Jur. N. S. 349; 25 L. J. (ch.) 688. It is desirable that to the name of the person signing the extract, and to the word “rector,” &c., the words “of the aforesaid parish” should be added. The civil officer signing the certified copy should always be correctly described.

ter certified "by the officer to whose custody the original is entrusted" is admissible in evidence, notwithstanding the words in sect. 14 of 14 & 15 Vict. c. 99 :—"and no statute exists which renders its contents provable by means of a copy" (a).

*Certified copies or extracts issued by superintendent registrar.*] The original registers kept by the civil registrars of marriages, and one of the duplicate originals of the ecclesiastical registers, are placed, when filled, in the custody of the superintendent registrar at the district register office. By sect. 36 of 6 & 7 Will. 4, c. 86, every superintendent registrar is required to cause indexes of the register books to be made; and every person is entitled, at all reasonable hours to search these indexes, and to have a certified copy of any entry in the register books under the hand of the superintendent registrar on payment of the following fees: for every general search the sum of 5s., for every particular search 1s., and for every certified copy the sum of 2s. 6d. The party applying for a "particular search" in the indexes may be required to state the names of the persons to whom the supposed entry relates; but in the case of a "general search" the applicant will not be required to state any name, and will be entitled to examine as many indexes as may be requisite for the accomplishment of the object of search.

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(a) The custody of a register by the parish clerk at his house is not, unless accounted for, such reasonably proper custody as to render receivable in evidence an extract made by a witness. *Doe dem Arundel (Lord) v. Fowler*, 14 Jur. 179; 19 L. J. (Q.B.) 151. A mere certificate—not a copy of the register—of a marriage by the clergyman, or any other person, in whose presence it was celebrated, is not evidence. *Nokes v. Milward*, 2 Add. 390.

*Certified copies issued by the Registrar General.]* By sects. 37 & 38 of 6 & 7 Will. 4, c. 86, the Registrar General is to cause indexes to be made of all the certified copies of registers at the general register office, where searches are to be allowed in the usual official hours, and certified copies given. The fees are, for a general search 20s. ; for a particular search 1s. ; and for every certified copy 2s. 6d. The certified copies are to be sealed or stamped with the seal of the office ; and every certified copy so sealed or stamped is to be received as evidence of the marriage, birth, or death to which the same relates, "without any further or other proof of such entry."

*Non-parochial registers.]* More than 7,000 registers and books containing records of births, baptisms, deaths, burials, and marriages, belonging to different nonconformist bodies, have been deposited in the custody of the Registrar General at Somerset House, pursuant to the Act of 3 & 4 Vict. c. 92. The registers of the Quakers and of the foreign protestant churches include marriages ; the remaining books are for the most part registers of births or baptisms, but there are several registers of burials, and a few of marriages. The dates of these books range from the middle of the 16th century to the year 1840. By the above statute, the registers so deposited are to be deemed to be in legal custody, and are to be receivable in evidence in courts of justice. Extracts purporting to be stamped with the seal of the general register office are to be received in evidence in all civil cases, instead of the production of the originals (b).

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(b) 3 & 4 Vict. c. 92, s. 9. But see this Act *passim*. Its provisions are extended to certain other non-parochial registers (including marriages) by 21 & 22 Vict. c. 25.



From these provisions the registers of marriages at the Fleet and King's Bench prisons, at May Fair, and at the Mint in Southwark, and elsewhere, which are transferred from the registry of the Bishop of London to the Registrar General, are expressly excepted (a).

*Presumption in favour of marriage.*] In the absence of register proof and the testimony of persons present at the ceremony, the evidence of marriage rests upon reputation, public owning and reception by the family, and cohabitation. The presumption of law is always in favour of marriage : *semper præsumitur pro matrimonio*.

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(a) Sect. 20. Although the Fleet books are no evidence of a marriage, the general reputation in the family that the parties were married in the Fleet has been received as good evidence. *Reed v. Passer*, 1 Peake, 303; and other cases.

## CHAPTER VII.

### OF THE VALIDITY OF MARRIAGES ; AND OFFENCES AGAINST THE MARRIAGE ACTS.

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#### SECT. 1.—MARRIAGES UNDER 6 & 7 WILL. 4, c. 85, AND AMENDING ACTS, TO BE COGNIZABLE.

“Every marriage solemnized under this Act [6 & 7 Will. 4, c. 85] shall be good and cognizable in like manner as marriages before the passing of this Act according to the rites of the Church of England” (sect. 35).

To the same effect it is enacted by 19 & 20 Vict. c. 119, that “every marriage solemnized under any of the said recited Acts (a), or of this Act, shall be good

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(a) 6 & 7 Will. 4, c. 85 ; 1 Vict. c. 22 ; and 3 & 4 Vict. c. 72.

and cognizable in like manner as marriages before the passing of the first-recited Act according to the rites of the Church of England" (sect. 23). By the same statute marriages had under the 9 & 10 Vict. c. 72, between parties residing respectively in England and Ireland are declared valid (sect. 7).

SECT. 2.—MATTERS NOT ESSENTIAL TO THE VALIDITY  
OF MARRIAGES.

*As to church marriages.]* After the solemnization of any marriage after banns it is not necessary, in support of such marriage, to give any proof of the actual dwelling of the parties in the respective parishes wherein the banns were published; nor where the marriage is by licence, that the usual place of abode of one of the parties, for the space of 15 days, was in the parish where the marriage was solemnized (a).

As to consent to the marriage of a minor, the statute is only directory, and does not make the marriage void if solemnized without consent (b).

*As to other than church marriages.]* After any marriage shall have been solemnized it is not necessary, in support of such marriage, to give any proof of the actual dwelling of either of the parties previous to the marriage within the district wherein such marriage

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The first of these Acts provides for church marriages in chapels with districts assigned to them, licensed by the bishops, as well as for the marriages of dissenters, &c.

(a) 4 Geo. 4, c. 76, s. 26.

(b) *Id.* s. 22, which prescribes the penalty for disobeying the direction of the Act as to consent; namely, forfeiture of property accruing from the marriage.

was solemnized, for the time required by the Act ; or of the consent of any person whose consent thereunto is required by law ; nor can any evidence be given to prove the contrary in any suit touching the validity of such marriage (c).

To the like effect the Act of 3 & 4 Vict. c. 72, after empowering the superintendent registrar to issue his certificate in the cases therein referred to for the marriage of the parties in a registered building out of the district of their residence, enacts (sect. 2) that it shall not be necessary, in support of such marriage, to give any proof of the truth of the facts therein authorized to be stated in the notice, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

SECT. 3.—MARRIAGES VOID BY REASON OF  
IMPERFECT CELEBRATION.

*As to marriages by Established Church.*] Where the parties knowingly and wilfully intermarry : (1) without authority, *i.e.* without due publication of banns, licence duly granted, or superintendent registrar's certificate ; (2) in a place other than a church or public chapel wherein banns may be lawfully published, unless by special licence ; or (3) consent to the solemn-

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(c) 6 & 7 Will. 4, c. 85, s. 25. These provisions are re-enacted by the Amending Act 19 & 20 Vict. c. 119, s. 17, with the addition that proof shall not be necessary that the registered building in which any marriage may have been solemnized had been certified according to law as a place of religious worship, or that such building was the usual place of worship of either of the parties ; and past and future marriages had in registered buildings which may not have been certified as required by law are declared valid.

zation by any person not being in holy orders,—the marriages of such persons are null and void (a). But *both parties* must have been cognizant of the undue publication of banns, or that the ceremony took place in a church or chapel where banns could not legally be published, or was performed by a pretended clergyman, in order to render a marriage invalid.

*As to marriages not by Established Church.*] If any persons knowingly and wilfully intermarry: (1) in any place other than the church, chapel, registered building, office, or other place specified in the notice and certificate; or (2) without due notice to the superintendent registrar, or without certificate of notice duly issued, or without licence; or (3) in the absence of a registrar or superintendent registrar, where the presence of one or both of those officers is necessary,—the marriage of such persons is null and void (b). These provisions of the Marriage Act of 1836, which are extended to the amending Acts incorporated with it will not render a marriage irregularly solemnized necessarily void; for if the irregularity be the result of error or inadvertence, or both the parties be not cognizant of its existence, it is not “knowingly and wilfully” done, and the marriage may be held to be good and valid. For instance, if a marriage were to be *inadvertently* solemnized in the absence of a registrar, the marriage would not of necessity be invalid; although for the removal of doubts as to its validity, another ceremony, when he should be present, would be most desirable.

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(a) 4 Geo. 4, c. 76, s. 22.

(b) 6 & 7 Will. 4, c. 85, s. 42. The section further provides that nothing therein contained shall extend to annul any marriage legally solemnized under the 4 Geo. 4, c. 76.

SECT. 4.—OF OFFENCES AGAINST THE MARRIAGE ACTS.

1. *Unduly Solemnizing Marriages.*

*Marriages by Established Church.*] If any person shall solemnize matrimony (1) in any other place than a church or such public chapel wherein banns may be lawfully published ; or (2) at any other time than between the hours of 8 and 12 in the forenoon, unless by special licence from the Archbishop of Canterbury ; or (3) without due publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same [or the certificate of the superintendent registrar be issued in lieu of banns, 6 & 7 Will. 4, c. 85] ; or (4) if any person falsely pretending to be in holy orders shall solemnize matrimony according to the rites of the Church of England,—every person so offending and being convicted thereof shall be adjudged to be guilty of *felony*, and shall be transported for 14 years ; but all prosecutions must be commenced within three years after the offence committed (4 Geo. 4, c. 76, s. 21).

*Marriages other than by Established Church.*] Every person who shall knowingly and wilfully solemnize any marriage in England, except by special licence, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the Church of England, or than the registered building or office specified in the notice and certificate (except between persons authorized to marry according to the usages of the Quakers or between the Jews according to their

usages); and every person who in any registered building or office shall knowingly and wilfully solemnize any marriage in the absence of a registrar of the district in which such registered building or office is situated, shall be guilty of *felony* (6 & 7 Will. 4, c. 85, s. 39). By the same section persons knowingly solemnizing marriages, except by licence, *within* 21 days after the entry of the notice; or if the marriage is by licence, within 7 days [now one clear day] after such entry, or after 3 months (a) after such entry, are guilty of felony.

Every superintendent registrar who shall knowingly and wilfully solemnize or permit to be solemnized in his office any marriage in the Act of 6 & 7 Will. 4, c. 85, declared to be null and void, shall be guilty of *felony* (7 Will. 4, and 1 Vict. c. 22, s. 3).

## 2. *Unduly Issuing Certificates or Licences for Marriage.*

*Unduly issuing certificates.*] Every superintendent registrar who shall knowingly and wilfully issue any certificate for marriage after the expiration of 3 months after the notice shall have been entered by him, or any certificate for marriage without licence, before the expiration of 21 days after the entry of the notice, or any certificate the issue of which shall have been forbidden by an authorized person, shall be guilty of *felony* (6 & 7 Will. 4, c. 85, s. 40).

*Unduly issuing licences.*] Every superintendent registrar who shall knowingly and wilfully issue any

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(a) The *Calendar* month is to be understood when the word "month" occurs in statutes.

licence for marriage after the expiration of 3 months after the entry of the notice by the superintendent registrar, shall be guilty of *felony* (7 Will. 4, and 1 Vict. c. 22, s. 3).

### 3. *False Declarations and Notices.*

Persons making wilfully false declarations or signing any false notice or certificate required by the 6 & 7 Will. 4, c. 85, for the purpose of procuring any marriage shall, by section 38 of that Act, suffer the penalties of perjury, provided the prosecution be commenced within 3 years after the offence; and by the 3 & 4 Vict. c. 72, every person who shall knowingly make any false declaration under that Act for the purpose of procuring any marriage out of the district in which one of the parties dwells shall suffer the penalties of perjury; but in this case no prosecution can take place after 18 months.

A similar provision is contained at the end of section 2 of the 19 & 20 Vict. c. 119, where it is enacted that every person who shall knowingly and wilfully make and sign any false declaration, or who shall sign any false notice, for the purpose of procuring any marriage under the provisions of any of the recited Acts or this Act, shall suffer the penalties of perjury. Again, in section 18 of the same Act, there is a similar enactment as to the declarations and notices required by that Act.

Every person who shall forbid the issue by any superintendent registrar of a certificate (with or without licence) for marriage, by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such re-



presentation to be false, shall suffer the penalties of perjury (19 & 20 Vict. c. 119, s. 18).

The provisions as to the forfeiture of property accruing to the offending party from any marriage obtained by means of any wilfully false declaration, notice, or certificate have already been stated (a).

#### 4. *Offences connected with Registration.*

*Giving false information to be inserted in the register.]* The pains and penalties of perjury are incurred by every person who shall wilfully make or cause to be made, for the purpose of being inserted in any register of marriage, any false statement touching any of the particulars required to be registered (b).

*Not duly registering, or losing or injuring the register.]* A penalty not exceeding 50*l.* attaches to every person who shall refuse, or without reasonable cause omit to register any marriage solemnized by him, or which he ought to register; or who having the custody of any register book shall carelessly lose or injure the same, or allow the same to be injured (c).

*Forging or destroying registers.]* Whoever shall unlawfully forge or fraudulently alter in any register any entry relating to any marriage, &c., or any certified copy of such register, or unlawfully destroy, deface, or injure, or permit to be destroyed, defaced, or injured any such register, or give any false certificate relating to any marriage, &c., is guilty of felony, and upon conviction is liable to penal servitude for life, or for any

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(a) See *ante*, p. 69.

(b) 6 & 7 Will. 4, c. 86, s. 41.

(c) *Ib.* s. 42.

term not less than 3 years, or to be imprisoned for any term not exceeding 2 years, with or without hard labour, and with or without solitary confinement. See Forgery Consolidation Act, 24 & 25 Vict. c. 98, ss. 36, 37.

*Pecuniary penalties.*] The mode of procedure for the recovery of fines and forfeitures imposed by 6 & 7 Will. 4, c. 86, is pointed out by sections 45, 46, and 47 of the Act, and in 1 Vict. c. 22, s. 4.

## CHAPTER VIII.

### OF THE MARRIAGE LAWS OF IRELAND, SCOTLAND, THE CHANNEL ISLANDS, AND THE ISLE OF MAN.

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#### SECT. 1.—THE MARRIAGE LAW OF IRELAND.

*Marriages by the Protestant Episcopal Church.*] Since 1st January, 1871, marriages in Ireland, between persons both of whom are Protestant Episcopalians, are governed by the 33 & 34 Vict. c. 110, prior to which the law with respect to such marriages was what the matrimonial law of England was before the Act of 26 Geo. 2. Marriages may continue to be solemnized in any church or chapel of the late Established Church of Ireland, as well as in any church or chapel to be licensed for that purpose. The ceremony must be preceded by—(1) publication of banns, according to the rules in force at the time of the passing of the Act in relation to banns in parish churches of the Established Church; (2) licence or special licence

granted in manner provided by the Act ; or by (3) certificate from the registrar.

The publication of banns, following the canons and rubrics, takes place in Ireland after the Nicene Creed ; and it may be on any holy day on which divine service is performed, as well as on Sundays. Licences, which on account of their cheapness, are more frequently resorted to than banns, are granted by surrogates or persons nominated under the 33 & 34 Vict. c. 110 by the bishops of the Irish Church to act within defined districts ; and such licences authorize marriage in churches or chapels situate within such districts whenever both of the parties are Protestant Episcopalians and resident therein. For every such licence the person granting it is entitled to have from the party requiring it a fee not exceeding the sum of 5*s*. A licence is not granted until 7 days after notice given by one of the parties who has dwelt not less than 7 days in the district ; and the surrogate is required to send a copy of the notice to the clergymen officiating at the places of worship where the parties intending marriage have been in the habit of attending. A copy of the notice is entered in a book furnished by the Registrar General called the "Marriage Notice Book," which book is to be open at all reasonable times without fee to persons desirous of inspecting the same. The fee for entering the notice is 1*s*. Before the licence is granted, however, one of the parties must appear personally before the surrogate and make an affidavit as to the absence of impediment, and as to residence during 14 days, by one of the parties within the district attached to the church or chapel in which the marriage is to be solemnized ; also as to consent in the case of minors (a).

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(a) 33 & 34 Vict. c. 110, s. 35.

When both the parties are Protestant Episcopalians any bishop of the Irish Church may grant special licences to marry at any convenient time in any place within his episcopal superintendence (a).

*Roman Catholic marriages.*] So far as relates to the legal constitution of marriage between two Roman Catholics in Ireland, the matrimonial contract is left to the operation of the common law, without any statutory enactment. The provisions of Mr. Monsell's Act (26 & 27 Vict. c. 90) relate to the registration of such marriages, and are directory only. By the common law it was essential that the marriage should be performed by a clergyman in holy orders, either of the Roman Catholic or of a Protestant episcopal church; but a marriage solemnized by any such clergyman either in the church or in a private house, without restriction as to time or place, between persons competent to intermarry, was valid, without banns, licence, residence, or consent (b). This is still the law of Ireland as to all Roman Catholic marriages.

The decrees of the Council of Trent having been published in Ireland, by the law of the Roman Catholic church all marriages are null and void unless contracted before the parish priest and two witnesses, or another priest sanctioned by him or the ordinary. According to the law of the church, banns ought to be published on three successive Sundays or holy days, unless dispensed with, as it usually is, by episcopal licence. Of these matters, however, the law of the land takes no cognizance; and a marriage contracted in the presence

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(a) *Ib.*, s. 36. Prior to this Act special licences in Ireland were granted by the Archbishop of Armagh only.

(b) Decision of the House of Lords in the celebrated case of *The Queen v. Millis*, 10 Clark & Finn. 534.

of a priest in Ireland, between two Roman Catholics, without banns or licence, although contrary to the discipline of their own church, would be valid (c).

*Mixed marriages.*] Before 1st January, 1871, the solemnization of mixed marriages by the Roman Catholic clergy was contrary to law. By the Irish statute 19 Geo. 2, c. 13 every marriage celebrated by a Roman Catholic priest between two Protestants, or between a Roman Catholic and "any person who hath been or hath professed him or herself to be a Protestant at any time within twelve months before such celebration of marriage," was declared absolutely null and void to all intents and purposes (d). But by 33 & 34 Vict. c. 110, s. 38, so much of the Act of 19 Geo. 2 as nullified such marriages celebrated by a Roman Catholic priest is repealed, and marriages between persons of different religious persuasions are legalized, provided certain conditions are complied with. A Protestant episcopalian clergyman may solemnize marriage "between a person who is a Protestant episcopalian and a person who is not a Protestant episcopalian," and a

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(c) Rep. Marr. Laws Comm., p. xiii. "In all cases the parties about to be married come before the parish priest, accompanied by their friends or relatives. The parish priest must then make a strict inquiry as to their ability to marry; whether there exists any impediment; whether they are free to marry; whether there is any pre-contract, either previous marriage, or promise of marriage. Then there are inquiries also whether they have a sufficient knowledge of the Christian doctrine. The parties are obliged to go to confession previous to marriage, and the priest can examine them *in foro conscientiae*." Evidence of Right Rev. Bishop Moriarty, *ib. App.*, p. 98.

(d) In the celebrated case of *Yelverton v. Yelverton*, the marriage ceremony by a Roman Catholic priest in Ireland was held to be void on the ground that one of the parties, although professing to be a Roman Catholic at the time of the marriage, had been a Protestant within 12 months before the celebration.

Roman Catholic clergyman may solemnize "between a person who is a Roman Catholic and a person who is not a Roman Catholic," on condition—

1st. That notice is given to the registrar, and his certificate is issued, pursuant to the Act of 7 & 8 Vict. c. 81, and 26 Vict. c. 27 :

2nd. That the certificate of the registrar is delivered to the clergyman solemnizing such marriage at the time of celebration :

3rd. That such marriage is solemnized in a building set apart for divine service according to the rites of the religion of the officiating clergyman, and situate within the district of the registrar by whom the certificate is issued :

4th. With open doors :

5th. That such marriage is solemnized between the hours of 8 A.M. and 2 P.M. in the presence of two or more credible witnesses.

But in case of the wilful violation of any of these conditions such marriage will be void to all intents and purposes.

*Presbyterian marriages.*] The Irish Marriage Act of 1844 (7 & 8 Vict. c. 81) draws a line between Presbyterians and other Protestant denominations ; and in its mode of regulating Presbyterian marriages follows closely the analogy of the law relating to marriages by the Protestant episcopal church. Between two parties, of whom either is a Presbyterian, marriage may be solemnized in registered meeting houses according to the forms used by Presbyterians. Every such marriage must be preceded either by a publication of banns on three successive Sundays, or by a licence granted by certain Presbyterian ministers whose function closely resembles that of bishops' surrogates. For licences

special conditions are prescribed, and notice must be entered in a book kept for the purpose in each congregation ; almost all marriages among the Irish Presbyterians take place by licence, although more costly and giving more trouble than banns. Every marriage must be solemnized in the specified meeting house by a Presbyterian minister, with open doors, between the hours of 8 A.M. and 2 P.M. No provision is made for the acceptance in lieu of the ordinary mode of procedure among Irish Presbyterians of any corresponding procedure in England or Scotland where one of the parties resides in either of those countries.

By 33 & 34 Vict. c. 110, special licences to marry at any convenient time at any place in Ireland, provided both the parties are Presbyterians, may be granted by the moderator of the general assembly, and the moderators of the Synods and Presbyteries named in the Act.

*Marriages by registrar's certificate or licence.]* For the marriage of Protestant Nonconformists (except those of Presbyterians), Quakers, and Jews, as well as for marriages by a merely civil ceremony, the procedure as to notices, declarations, certificates and licences, and the conditions as to time and otherwise, are substantially the same in Ireland as under the parallel system in England.

The notices must in all cases be given to the district registrar. For marriage by certificate each party must have resided within the district of the registrar to whom the notice is given for the space of seven days immediately preceding the giving of the notice. For marriage by licence one of the parties must have resided fifteen days in the district of the registrar. The notice must state



(with other particulars) what is the place of public worship usually attended by each party; and that they have attended such place of worship for not less than one month.

Having entered the notice in the "Marriage Notice Book" (which is to be open for inspection at all reasonable times, without fee) the registrar is required, under a penalty of 40*l.* for omission, to send by post, in a registered letter, a copy of the notice under his hand,—to the minister of the church, chapel, or place of worship which the parties to the marriage usually attend,—to the minister of the church, chapel, or registered place of worship in which the celebration is to take place,—or to the registering officer of Quakers, or secretary of the synagogue, if according to the usages of the Quakers or Jews.

Where the marriage is to be contracted at the registrar's office, and where there is no minister of the place of worship which the parties or either of them usually attend (except in the case of Quakers and Jews), the registrar is required to cause a copy of the notice to be published at the expense of the parties, once at least in two consecutive weeks, in some newspaper circulating in the district in which the marriage is intended, or if there is not such a newspaper, then in one circulating in the county. The registrar is liable to a penalty of 40*l.* for neglecting to publish such notice (33 & 34. Vict. c. 110, s. 41).

In addition to the declaration for marriage by licence made at the time of giving notice, an oath (or declaration if the party objects to take an oath) must be administered immediately before the licence is granted, which may be on the eighth day from the day of entering the notice, and not before. The certificate may be issued on the twenty-second day from the day of the

entry of notice ; no oath or declaration is then required.

All marriages in Ireland under a registrar's certificate or licence must be solemnized within three months of the day of entering the notice, in the place named in the certificate or licence, with open doors, between the hours of 8 A.M. and 2 P.M. The presence of a registrar at such solemnization, unless the marriage takes place at the registrar's office, is not required.

*Marriages in Ireland where one of the parties resides in England.*] A marriage in Ireland, where one of the parties resides in England, can be solemnized only by licence. The party resident in England must give notice to the superintendent registrar of the district in which he or she resides and obtain his certificate for marriage by licence ; and after the expiration of seven days from the issue of such certificate, and on the production of the same to the registrar in Ireland, he may issue his certificate and grant a licence for marriage to the party resident in Ireland by whom the notice was given (9 & 10 Vict. c. 72, s. 1).

*Marriage in Ireland where one of the parties resides in Scotland.*] A marriage in Ireland where one of the parties resides in Scotland can be solemnized only by licence. The party resident in Scotland should procure a certificate of proclamation of banns in the congregation with which he or she is connected. After seven days from the granting of such certificate the registrar in Ireland to whom it is produced may issue his certificate and licence for the marriage to the party resident in Ireland by whom notice has been given to him (9 & 10 Vict. c. 72, s. 2).

*Marriage in England where one of the parties resides in Ireland.*] The party resident in Ireland should give notice to the registrar of the district in which he or she resides, and after twenty-one days the registrar may issue his certificate, which, as to such party, will be as valid and effectual for the solemnization of marriage under 6 & 7 Will. 4, c. 85, and amending Acts, as the certificate of a superintendent registrar in England would be where the parties are resident in different districts (19 & 20 Vict. c. 119, s. 7).

*Power to grant special licences.*] Besides the bishops of the Protestant Episcopal Church and the moderators of the Presbyterian Synods, the following official persons are empowered to grant special licences to marry, at any convenient time, at any place in Ireland—viz., the Chairman of the Congregational Union of Ireland; the President, or head, of the Methodist or Wesleyan Church; the President, or head, of the Methodist New Connexion Church; the President, or head, of the Association of the Baptist Churches in Ireland; the Clerk to the yearly meeting of the Society of Friends in Ireland: provided always, that the parties to whom such special licence is granted are both members of the same church as the moderator, chairman, president, head, or clerk granting such special licence (33 & 34 Vict. c. 110, s. 37). This novel power of granting special licences has not been extended to the head of the Jewish religion in Ireland, probably owing to some oversight. Under what rules or restrictions these special licences are granted by these different official persons does not appear.

*Registration of marriages.*] There is a material

difference between the system of registering marriages in Ireland and that of this country, except with respect to the Protestant Episcopalian marriages, which are registered in the same manner as those by the Established Church in England. The ministers of the several Presbyterian meeting-houses and other registered places of worship in which marriages may be solemnized are supplied with proper books in duplicate by the Registrar General, and are bound, under heavy pecuniary penalties, whenever they solemnize a marriage, to register it in these books—one of which is kept in each congregation, and the other (when the books are filled) is required to be delivered to the registrar of the district to be kept in his custody, to whom also transcripts are sent quarterly for transmission to the Registrar General. In the cases of Quaker and Jewish marriages, the registering officers and secretaries of synagogues respectively perform the functions connected with registration.

For the registration of Roman Catholic marriages a different system is provided by Mr. Monsell's Act (26 & 27 Vict. c. 90). The parties are required, under a penalty of 10*l.* on the husband, to obtain, previously to the celebration, from the district registrar a form of certificate with the particulars to be filled up. This certificate is to be signed at the time of the marriage by the officiating clergyman, the parties, and two witnesses; and the husband is required to return it by post to the district registrar within three days after the celebration of the marriage, under the like penalty of 10*l.* No legal obligation, however, for any of these purposes is imposed upon the officiating minister; and it is said that in some of the Roman Catholic dioceses in Ireland these provisions of the law are much disregarded. By the rules

of the Roman Catholic Church every parish priest solemnizing marriage is required to enter the particulars of each marriage in a register kept for the purpose. It is stated that in Ireland the authorities of the Roman Catholic Church now strictly enforce this part of their law, and that it would be an advantage if these registers were made legal evidence (a).

Marriages by the civil form are registered by the registrar or deputy registrar in whose presence they have been celebrated.

Thus the means are provided by law for the general registration of all marriages in Ireland, although, as regards those solemnized by the Roman Catholic clergy, they are not yet effective.

#### SECT. 2.—THE MARRIAGE LAW OF SCOTLAND.

Except as to the operation of the Act 19 & 20 Vict. c. 96 (commonly called Lord Brougham's Act), which renders it necessary for the validity of any marriage contracted in Scotland that one of the parties should have lived in that country for twenty-one days next preceding such marriage, the legal constitution of marriage in Scotland depends, not upon the observance of any formalities or conditions prescribed by statute, but upon the ancient canon law, subject only to such modifications as it has undergone from time to time by the application of the rules of evidence established in that country, and the course of judicial decision. Penalties are imposed by several ancient laws upon the clandestine celebration of marriage; and by recent enactments the power of formal solemnization is conferred upon the ministers

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(a) See Rep. Marr. Laws Comm., pp. xv—xvi.

of all religious persuasions, and provision is made for the registration of marriages ; but none of these enactments alter, or in any way limit, the application of the rules of the ancient canon law as to the constitution of marriage. Under this system of law it is not requisite that the contract should be made or authenticated in the presence of any minister of religion or civil officer, or by any kind of solemnity, formal declaration, or other definite act (*b*).

The Scottish law recognizes three distinct modes of constituting marriage : one called "Regular," and two called "Irregular." The latter are called consensual marriages, as they profess to be founded upon the principle of the constitution of marriage by the interchange of consent.

*Regular marriages.*] Regular marriages are those which are solemnized according to certain rules of procedure, established by custom or statute, in the presence of a minister of religion. Before the stat. 10 Anne, c. 7, the solemnization of marriage by any person other than a minister of the Established Church of Scotland was prohibited under severe penalties. By

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(*b*) Rep. Marr. Laws Comm., p. xvi., where the following is cited from a recent judgment by Lord Deas : "The leading principle is that *consent makes marriage*. No form or ceremony, civil or religious, no notice before or publication after, no consummation or cohabitation, no writing, no witnesses even, are essential to the constitution of this the most important contract which two private parties can enter into, whether as affecting their domestic arrangements or the pecuniary interests of themselves and families. Matrimonial consent may be verbally and effectually interchanged when no third party is present; and if it can be proved, even at the distance of years, by subsequent written acknowledgments or oath of reference, or in any other competent way, that such consent was seriously and deliberately given, the parties will be held to have been married from that time forward, whether they have cohabited in the interval or not." *Leslie and Leslie*, Court of Sess. Rep., 2nd S. xxii., p. 993.

that statute, however, the law was relaxed in favour of ministers of the Protestant Episcopal Communion. In other respects the general prohibition continued in force until 1834, when, by 4 & 5 Will. 4, c. 28, all the penalties imposed by the older statutes upon the celebration of marriage in Scotland by Roman Catholic priests or other ministers were repealed; and it was declared lawful for all persons in Scotland, "after the proclamation of banns there," to be married by any priests or ministers not of the Established Church.

To render the solemnization of marriage under these statutes lawful and regular, the previous publication of banns in the church (*i.e.*, the Established Church) of the parish in which each of the parties resides is therefore in all cases required, whether either or both of the parties belong to the Established Church, or to any other denomination.

To procure the publication of banns in parochial churches application must be made to the session clerk of the parish; and, upon every such application, a statement (verified by the certificate of two householders or of one elder of the parish) must be furnished, that the parties, or one of them, have, or has, resided for *six weeks* in the parish, and that they are unmarried, and not related to each other within the prohibited degrees. The publication of banns takes place by the session clerk at the time when the congregation is assembled for, and immediately before the commencement of, divine service. It must be repeated three times, and it ought properly to take place on three successive Sundays; but the general practice, in fact, is to make all the three publications on the same Sunday, on payment of extra fees (*a*).

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(a) Of the fees charged for banns by the session clerks much

It is not necessary that regular marriages in Scotland should be solemnized in any particular form, or at any particular place or time. The presence of any minister of religion at the time of solemnization, wherever it takes place (or, in the cases of the Quakers and Jews, of their proper officers), entitles them to the character of marriages *in facie ecclesie*, and they are, in fact, usually solemnized in private houses, and indiscriminately at all hours of the day, except in the cases of Roman Catholics and Protestant Episcopalians, whose general practice is to marry in their churches or chapels according to the rules of those communions.

The presence of a civil registrar is not required at any regular marriage, though his attendance, if the parties desire it, may be obtained on payment to him of 20s. ; but such cases are very rare. Non-compliance with the legal conditions of regular marriage, as to banns or otherwise, may subject the parties concerned to statutory penalties, but cannot affect the validity of the marriage ; the utmost effect of such non-compliance is to make the marriage irregular. The consent of parents or guardians in the case of minors is not necessary.

*Irregular marriages,—per verba de præsenti.*] Marriages which are not solemnized in the presence of a

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complaint was made before the Marriage Laws Commissioners. They were said to be in many places exorbitant, and to be imposed or augmented without due legal authority. In the opinion of Dr. Stark, one of the chief officers under the Registrar General for Scotland, their effect is to "drive large numbers of the lower orders to marry irregularly, or more commonly to live in a state of concubinage, simply because they are unable to pay these high fees;" and similar representations were made by the town council of Edinburgh, and the parochial board of Leith. Rep. Marr. Laws Comm., p. xvii.



minister of religion, and after due publication of banns are "irregular," the first class of irregular marriages being said to be constituted "*per verba de præsenti*," i.e., by some present interchange of consent to be thenceforth man and wife privately or informally given. Nothing more is required to constitute these marriages than that the parties should mutually agree and consent to become thenceforth the husband and wife; and whether the consent is declared in the most open manner, before a justice of the peace, or before a civil registrar, or in the most secret and private manner between the parties themselves, with or without witnesses, and with or without any subsequent open acknowledgment or matrimonial cohabitation, a valid marriage is constituted (a).

*Irregular marriages,—by promise, subsequente copulâ.]*

This second class of irregular marriages is constituted by a promise of future marriage without any present interchange of consent to be husband and wife, followed at a subsequent time by carnal intercourse. A mere promise of future marriage is, according to the present law of Scotland, of no greater force or effect than a similar promise in England or Ireland: and to intercourse preceded by a promise of future marriage

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(a) Although this is now fully settled to be the law of Scotland, it is confidently maintained by some high authorities that this doctrine is a recent innovation, due in a great measure to the decision of Lord Stowell in the case of *Dalrymple v. Dalrymple* (1811), where the validity of a marriage, founded upon a written declaration secretly exchanged by the parties, was maintained. Lord Stowell, however, stated in his elaborate judgment that he had not only examined the decisions and the text writers of Scotland, but had had the law of the country proved before him by the sworn opinions of eminent Scottish jurists. See 2 Hagg. Con. R. 54.

no legal effect is ascribed, unless such promise is proved by writing under the hand of the party, or by his or her confession upon oath ; in the case, however, of a *written* promise of future marriage, or a promise afterwards confessed upon oath, the effect of marriage is practically given. A party cannot be put upon oath when the effect would be to invalidate another subsequent marriage ; but this protection is not given by the law to the innocent victim of the later marriage if the other mode of proof, viz. writing, is resorted to.

It seems to be an unsettled point in the law of Scotland, whether a promise of future marriage, *subsequente copulâ*, is sufficient, without more, to constitute marriage, or whether it merely constitutes such a case of pre-contract as to be capable of being enforced on the principle of specific performance by a court of justice, and to be a diriment impediment in the meantime to a marriage with another party.

But although the opinion that the concurrence of the two facts, *per se*, constitutes marriage, is most commonly entertained, a contrary opinion, viz. that these circumstances amount to no more than a binding pre-contract, which requires a judicial sentence before it can become actual marriage, is maintained by some eminent Scottish lawyers ; and the question as to which of these two opinions is right has never been the subject of legal decision. The actual status of a man and woman living together after a written promise of marriage, but without any *present interchange* of matrimonial consent, or decree of declarator, is that of marriage, or that of concubinage,—and of their children legitimacy or illegitimacy,—according as this question may be determined one way or the other (b).

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(b) Rep. Marr. Laws Comm., p. xx.

*Habit and repute.*] It is a common notion that a marriage may also be constituted in Scotland by "Habit and repute," or the reputation of being married persons acquired amongst relatives, friends, and acquaintances by persons living together as husband and wife. Such reputation, however, does not constitute marriage, but merely establishes a presumption that an actual marriage has intervened. It is admitted to be evidence of marriage under every system of enlightened jurisprudence ; but it cannot be held as constituting, or admitted as incontrovertible proof of, a marriage. The practical effect of the presumption, however, in Scotland, where the law requires no definite and solemn acts for the constitution of the contract, is said to be to discourage concubinage and to promote regular marriage ; for connections under the pretence or reputation of marriage necessarily would become marriage unless there were a clear intention to the contrary (a).

*Use of penal acts in support of irregular marriages.*] Prior to the year 1834, when the power of solemnizing marriage regularly was restricted to the clergy of the Established Church of Scotland, regular marriages became in many parishes and districts the exception and not the rule. An indication of a prevailing sense of the insecurity, without some public authentication, of such marriages is found in the practice of using the penal acts against clandestine marriages, particularly those of 1661 and 1698, for the support and protection of the system which they were intended to suppress. The parties appeared before a magistrate, who pronounced on their confession a sentence declaring that they had contracted a clandestine marriage, and im-

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(a) Rep. Marr. Laws Comm., p. xxi.

posed a fine, which was merely nominal. An extract of this sentence was delivered to the parties, and regarded by them as their marriage certificate. It is said that a great change took place from the time when ministers of all denominations were allowed to perform regular marriages, and that a state of public opinion having grown up unfavourable to irregular marriages, they have become of rare occurrence (b).

*Lord Brougham's Act.*] By the Act 19 & 20 Vict. c. 96 no irregular marriage contracted in Scotland after 31st December, 1856, is valid unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage. This Act has entirely put an end to the practice of English persons contracting hasty and often disastrous marriages in Scotland at Gretna Green and other places immediately after crossing the border (c).

*Marriage in England where one of the parties resides in Scotland.*] For marriage in England *without licence* under 6 & 7 Will. 4, c. 85, or amending Acts, a certi-

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(b) No irregular marriages can be registered except such as are the subjects of prosecution (real or nominal) under the Acts against clandestine marriages, or ascertained by decrees of declarator, or registered under a sheriff's warrant. It is therefore quite impossible to rely upon the general registry as furnishing any data upon which even a loose estimate of the total number of irregular marriages actually contracted can be formed. Rep. Marr. Laws Comm., p. xxii.

(c) Gretna Green marriages formerly enjoyed good countenance. An Archbishop of Canterbury, a Lord High Chancellor, and a Privy Seal (all at one and the same time in the councils of King George III.) had each of them, by a marriage before the blacksmith. testified his obedience to the law, and his reverence for the statutes. Macqueen, *Law of Divorce*, p. 24.

ficate of proclamation of banns in Scotland under the hand of the session clerk of the parish will be as valid and effectual, as regards the party residing in Scotland, for authorizing the marriage as the production of the certificate of an English superintendent registrar would be in reference to a party resident within his district (19 & 20 Vict. c. 119, s. 8). But for marriage in England according to the rites of the Established Church, the reception of a certificate of banns proclaimed in Scotland as to one of the parties residing there, is not provided for by the Marriage Acts.

*Marriage in Scotland where one of the parties resides in England.]* Where a person living in England desires to be married in Scotland to a person living there, the Marriage Acts make no provision for any proceedings in furtherance of that object on this side of the border. The production of a certificate of banns from a clergyman, or of notice from a superintendent registrar in England, ought to be equally valid for the celebration of a marriage in Scotland as the certificate of banns proclaimed in Scotland for a marriage in England; but the existing law makes no such provision. As to the person resident in an English parish or district no clergyman or superintendent registrar has authority to issue a certificate to warrant a marriage in Scotland. When it is remembered that the only instruments recognised as giving authority for regular marriage in Scotland are certificates of the proclamation of banns in the Scottish parishes where both parties reside, and that until the party has resided *six weeks* in the parish the banns cannot be published, it is obvious that an unreasonable law drives parties occasionally to irregular marriage. Men in situations

in England, such as farm stewards and gardeners, cannot get seven weeks' leave of absence in order to effect a regular marriage in Scotland.

[*Registration of marriages.*] The registration of marriages in Scotland is provided for by the Act (17 & 18 Vict. c. 80) under which the general system of civil registration is established there. Parties about to contract a *regular* marriage must obtain from the district registrar a schedule which they are required to produce, together with the certificate of proclamation of banns, to the officiating minister at the time of the celebration. This schedule, duly filled up, is required to be signed by the parties, by the minister, and by two witnesses; and the married parties are required to return the schedule for registration to the district registrar under a penalty. For the registration of *irregular* marriages the only provisions are contained in 17 & 18 Vict. c. 80, and in Lord Brougham's Act; under the former, marriages established by conviction before a magistrate, or by a decree of declarator of a competent court, may be registered on payment of 20s.; under the latter Act any persons who have contracted an irregular marriage, may, within three months thereafter, jointly apply to the sheriff or sheriff substitute of the county, who, on being satisfied of the fact of marriage, will grant a warrant to the registrar of the parish or burgh in which the marriage was contracted to enter it in his register, on payment of 5s. (19 & 20 Vict. c. 96, s. 2).

The registers in the custody of the district registrar are kept in duplicate; and one of the duplicates, after examination by an official, is annually transmitted to the Registrar General, and permanently preserved in his office.

*Legitimation of children by subsequent marriage.]* There is an important distinction between the law of Scotland and that of England upon the point of legitimation of children, the former legitimating all the children of the parties born before the marriage, and the latter only those born after it. The Scotch law is founded upon the civil and canon laws, which do not allow a child to remain illegitimate if the parents afterwards intermarry. In order that the intermarriage of the parents may render the children legitimate, it is essential that there should have been no impediment to their marriage at the time of their birth. Consequently no child can be thus legitimated but those born of a mother whom the father, at the time of its birth, might have lawfully married; if, therefore, either the father or mother of the child were at that period married to another, such child is incapable of legitimation.

In order to render the children legitimate by means of a subsequent marriage the domicile of the father must be in Scotland; but whenever the father is a domiciled Scotchman it is of no consequence in what country his natural children have been born, or his marriage with the mother of those children celebrated. Parties domiciled in England, and having illegitimate children born there, will not, by going into Scotland and marrying there the mother of such children, legitimate them.

A person legitimated in Scotland by the subsequent marriage of his parents cannot inherit lands in England (a).

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(a) 1 Bla. Com. 455-6, where Blackstone gives reasons against the law of legitimation *per subsequens matrimonium*. See also remarks of Registrar General of England on this subject, and on Scottish Marriage Law. Rep. Marr. Laws Comm. App., pp. 52-3.

*Conflict of law of divorce in Scotland and England.]*  
In Scotland, as in all other parts of the United Kingdom, persons under the bond of a prior subsisting marriage are disabled from marrying. There are, however, circumstances under which, upon the same admitted state of facts, the question whether a particular person is or is not in that category, might be answered in one way by a Scotch, and in another way by an English Court ; and the House of Lords itself might be compelled, upon appeal, to hold a marriage, bigamous in England, to be lawful in Scotland.

It is a settled point in the law of Scotland that a sentence of dissolution of marriage (on proof of facts constituting sufficient ground for dissolution of marriage according to that law, which admits of more latitude in this respect than the law of England) may competently be pronounced by a Scottish Court, between persons having their legal and matrimonial domicile and ordinary residence in England or in any other country, who have only resided in Scotland for a very short space of time, who have resorted thither (perhaps by mutual arrangement) for the express purpose of obtaining such a sentence, and who have no intention of remaining there after their divorce has been obtained.

The English Courts, on the other hand (with which the Irish Courts agree), refuse, under such circumstances, to acknowledge the validity of such a Scottish sentence ; they treat a marriage subsequently contracted in England by either of the parties so divorced as bigamous, and the issue of such subsequent marriage as illegitimate.

If indeed the suit were *bond fide* and the legal domicile of the husband Scotch at the time of the divorce, although the marriage might have been



originally English, the English Courts, according to the most recent authorities, might regard the marriage as effectually dissolved by a Scotch sentence ; but it may, perhaps, be considered still an unsettled point, whether they would recognize a *bond fide* temporary residence of both parties in Scotland, unconnected with any purpose of obtaining a divorce (but without a legal domicile in that country), as sufficient to enable English persons, when divorced by a Scottish sentence, to marry again in each other's lifetime.

The Marriage Laws Commissioners think that the legal validity and effect of a sentence of dissolution of marriage, pronounced in a *bond fide* suit by a Court having proper jurisdiction over the parties and the cause, ought to be the same throughout the United Kingdom ; and that the resort of persons domiciled and ordinarily resident in one part to the Courts of another part of the United Kingdom, for the sake of greater facility of divorce, ought to be prevented by proper limitations upon the jurisdiction of such Courts. They also think that the prohibition in Scotland of the intermarriage of persons declared by the sentence of a divorce court to have been guilty of adultery ought not to continue (a).

SECT. 3.—OF MARRIAGES IN THE CHANNEL ISLANDS  
AND THE ISLE OF MAN.

*Jersey.*] Marriages in Jersey may be solemnized in parish churches, according to the rites of the Church of England, after banns or by ecclesiastical licence, or in registered places of worship, or in the superintendent

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(a) Rep. Marr. Laws Comm., p. xxvi.

registrar's office after certificate or licence as in England. By an Act of the States of the Island, which was ratified by an Order in Council in 1842, the registration of marriages, as well as of births and deaths, was established on the basis of the English law. A superintendent registrar (whose office is at St. Helier's) was then appointed, and subordinate registrars (b). The Channel Islands are within the diocese of Winchester. Special licences are granted by the Dean of Jersey.

Notice to a superintendent registrar in England, and the issue of his certificate, will be of no avail for any marriage intended to be celebrated in Jersey. On the other hand, no effectual steps can be taken in that island with respect to the preliminary requirements for any marriage intended to be had in England.

*Guernsey.*] The foregoing remarks as to Jersey will apply to Guernsey in respect of the places in which marriages may be solemnized. An ordinance of 1840 established a registration of marriages (and of births and deaths) conformably with the spirit and intention of the English law. The chief registrar is to make indexes of the registers in his custody, and the fee for every search therein, together with a certified copy of an entry, if required at the same time, is 1s. For a marriage in Guernsey, no authority can be obtained from any superintendent registrar in England.

*The Isle of Man.*] At a Tynwald Court holden in August, 1847, three Acts were passed—viz. (1) to amend the law respecting the solemnization of mar-

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(b) The fee for special search is 1s., and for a certified copy 2s., applicable to all registers, whether in the custody of the clergy or others.

riages according to the rites of the Established Church ; (2) to provide for the solemnization of marriages of persons who object to, and decline, the offices of the Established Church ; and (3) for the better regulating parish and other registers of marriages, baptisms, and burials. The provisions in these Acts are similar to those in force in England. In the Act for regulating registers it is provided that copies of all entries shall be sent annually to the bishop's registrar, who is to cause them to be securely deposited, arranged, and indexed.

By an Act of Tynwald, August, 1848, further provision is made for the registry of marriages and births. Civil registry offices are established, and four deputy registrars, under the supervision of a registrar general, are appointed. The Act provides for registering Dissenters' marriages.

A superintendent registrar in England has no authority to receive notice of any marriage intended to be celebrated in the Isle of Man.

## CHAPTER IX.

### OF MARRIAGES NOT WITHIN THE GENERAL MARRIAGE ACTS; AND OF FOREIGNERS.

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#### SECT. 1.—OF THE MARRIAGES OF THE ROYAL FAMILY.

MARRIAGES of members of the Royal Family cannot legally take place without the consent of the Crown, unless, after the age of 25, the dissent of Parliament is not expressed. By stat. 12 Geo. 3, c. 11, “no descendant of the body of King George the Second, male or female (other than the issue of princesses who have married, or may hereafter marry, into foreign families), shall be capable of contracting matrimony without the previous consent of his Majesty, his heirs and successors, signified under the Great Seal, and declared in Council (which consent, to preserve the memory thereof, is hereby directed to be set out in the licence and register of marriage, and to be entered in the books of the Privy Council); and every marriage or matrimonial contract of any such descendant, without such consent first had and obtained, shall be

null and void to all intents and purposes whatsoever" (s. 1).

By the second section it is provided that in case any such descendant, being above the age of 25 years, shall persist in his or her resolution to contract a marriage disapproved of or dissented from by the king, his heirs or successors, that then such descendant, upon giving notice to the Privy Council, may at any time from the expiration of twelve months after such notice, contract such marriage; and his or her marriage with the person before proposed and rejected may be duly solemnized without the previous consent of his Majesty, his heirs or successors; and such marriage shall be good, as if the Act had never been made, unless both Houses of Parliament shall, before the expiration of the said twelve months, expressly declare their disapprobation of such intended marriage.

By the third section it is enacted that every person who shall knowingly or wilfully presume to solemnize, or to assist or to be present at the celebration of, any marriage with any such descendant, at his or her making any matrimonial contract without such consent as aforesaid first had and obtained, except in the case above mentioned, shall, being duly convicted thereof, incur and suffer the pains and penalties ordained and provided by the Statute of Provision and Premunire made in the 16th year of the reign of Richard the Second.

The Royal Marriage Act was passed in 1772, notwithstanding a vigorous opposition in both Houses of Parliament. Amongst other reasons assigned in the Lords' protest against the bill was that it provided no remedy at any age against the improvident marriage of the king reigning,—the marriage of all others the most

important to the public,—nor against the indiscreet marriage of a prince of the blood being regent. The opinion of the judges having been demanded on the principle of the bill, they stated their opinion that “the care and approbation of the marriages of the king’s children and grandchildren, and of the presumptive heir to the crown (other than the issue of princesses married into foreign families) do belong to the kings of this realm.”

The operation of this Act is not restricted to a matrimonial contract made in England ; the conditions which it enjoins admit of a performance in whatever place the marriage is celebrated. In the case of the late Duke of Sussex a ceremony of marriage between his royal highness and Lady Augusta Murray was performed at Rome in 1792 by a minister of the Church of England, preceded by a written formal contract of marriage signed by both parties. On their return to England they were married again, after banns, at St. George, Hanover Square. The king caused a suit to be instituted for the purpose of obtaining a sentence declaratory of the nullity of the marriage as had in violation of the Royal Marriage Act ; and the sentence declared that there was no sufficient proof of the marriage at Rome, but that “if any such marriage, or rather show or effigy of a marriage, was in fact had or solemnized at Rome between the parties, the said pretended marriage was and is absolutely null and void to all intents and purposes in law whatsoever ” (a).

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(a) *Heseltine v. Lady Augusta Murray*, 2 Addams, R. 400. In the Sussex Peerage case (1831), Dr. Lushington as advocate gave a written opinion that the Royal Marriage Act does not extend to marriages contracted and solemnized *bond fide* beyond the limits of British jurisdiction.

By statute 1 Will. 4, c. 2 (providing for the administration of the government in case the crown should descend to her present Majesty under the age of 18 years), it was enacted that it should not be lawful for the king or queen of this realm, for whom a regent was thereby appointed, to intermarry before his or her age of 18 years with any person whomsoever without the consent in writing of the regent ; and every person concerned in procuring such marriage, and the person who shall be so married to such king or queen, should be guilty of high treason.

SECT. 2.—OF MARRIAGES IN ENGLAND, IN AMBASSADORS' CHAPELS, AND IN CONSULATES.

The general rule that mere residence renders a person subject to the ordinary law of the country in which he resides is subject to some exceptions. Ambassadors are not subject to the whole body of the municipal law of the countries in which they reside ; their houses and the chapels attached thereto are considered to be part of the country to which they belong, and by the sanction of international law the marriages of foreign subjects in such chapels or houses are valid everywhere.

The marriages of British subjects abroad may be lawfully solemnized in the houses or chapels of our ambassadors ; in like manner marriages in England in the chapel or house of a foreign ambassador accredited to her Majesty may be solemnized between parties who are both the subjects of the country which the ambassador represents ; and without licence, or any of the formalities required by British law. But although such a marriage is valid when both parties are subjects of the foreign power represented by the ambassador,

a marriage so solemnized in England between a British subject and a foreigner would not by itself be recognized as legally binding upon the British subject for civil purposes in this country (*a*).

*Marriages in foreign consulates.*] Besides the liberty to contract matrimony in the chapels of embassies, the subjects of some foreign powers may intermarry at their consulates in England. Thus the subjects of France may contract marriage at the consulate general in London, where registers are kept in duplicate, and at the end of each year one copy is sent to the Ministry of Foreign Affairs at Paris, the other being preserved among the archives of the consulate. The functions of officers of the *État Civil* are conferred on consuls by Art. 48 of the Code Napoleon; and the form in which the *Actes de l'État Civil* should be recorded is prescribed by an *ordonnance*, dated 23rd Oct. 1833 (*b*).

### SECT. 3.—OF THE MARRIAGES IN ENGLAND OF FOREIGNERS.

*Where both parties are foreigners.*] A marriage duly solemnized in the manner prescribed by English law between parties capable of contracting according to that law is valid in England, even though the parties to that marriage being foreigners, contract it in this country in order to evade the laws of the country to

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(*a*) Rep. Marr. Laws Comm., p. xxxiii. Where a marriage had been solemnized by the chaplain of a foreign embassy between an Englishman and the subject of a foreign power, and the Registrar General had expressed doubts as to the legality of the proceeding, the Commissioners concurred in opinion that it would not be valid as to the British subject.

(*b*) Inf. of M. Gleizal, Chancellor of the Consulate General of France in England.



which they belong and in which they are domiciled ; but the validity of such a marriage, although unimpeachable by English law, will not necessarily be admitted in the country of the parties, and indeed may be declared void. Two French subjects came to England for the sole purpose of being married ; the man obtained a licence, falsely swearing that he had lived fifteen days in the parish in which he was staying, and they were married at St. Martin in the Fields. The parties returned to Paris but did not cohabit, and the man refused to have the marriage confirmed by French law ; proceedings were instituted by the wife in the civil tribunal, and the court declared the marriage null and void *ab initio* on the ground that it had been procured in evasion of the law. In 1858 the wife came with her mother to London and prayed the Divorce Court to declare her pretended marriage to be null in this country as well as in France. The judge ordinary (Sir C. Creswell) presiding in the full court, delivered judgment, holding the marriage valid and binding ; the petitioner was thus held to be a wife in England and an unmarried person in France (a).

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(a) See *Malac v. Malac* and comments thereon, Macqueen's Law of Divorce, 2nd ed. 333. Another instance of a marriage between foreigners in England being annulled in France may be cited :—

A young widow named Picard, who kept a furnished hotel at Paris, wishing to marry a M. Ramar, who was objected to by her father and mother, sold her business, went to London in company with Ramar, and was married there at St. Patrick's Chapel, near the Strand, on the 1st of January, 1865, without obtaining her parents' consent, or making any publication of banns, as required by the French laws. The newly-married couple immediately after returned to Paris, and the parents of the bride appealed to the Civil Tribunal to have the marriage annulled. After hearing counsel, the Tribunal decided that, as all the circumstances proved that the parties had gone to London solely for the purpose of avoiding the operation of the French laws, the marriage was clandestine, and accordingly declared it null and void.

*Where one of the parties is a foreigner and the other a British subject.]* Every nation has a right to impose on its own subjects restrictions and prohibitions as to entering into marriage contracts either within or without its own territories. The effect of this doctrine is most disastrous where, in consequence of the formalities and consents required by the laws of other countries not having been complied with and obtained, marriages contracted in England between foreigners and British subjects are declared void by foreign tribunals. Several cases have occurred in which foreigners not domiciled in this country have married English women according to the law of England, and have subsequently repudiated their wives, obtaining a decree of nullity from the foreign tribunals. To prevent such a result, the greatest circumspection is necessary on the part of the friends of English women who may be about to intermarry with foreigners.

## CHAPTER X.

### OF THE MARRIAGES OF EUROPEAN BRITISH SUBJECTS IN INDIA, IN THE COLONIES, AND IN FOREIGN PARTS (a).

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#### SECT. 1.—OF THE MARRIAGES OF EUROPEAN BRITISH SUBJECTS IN INDIA.

PRIOR to 1818 no attempt had been made to regulate the marriages of European British subjects in India by statute, such marriages being held to be governed by the law of England as it existed antecedent to Lord Hardwicke's Act (26 Geo. 2, c. 33) ; but doubts having been raised in 1816 whether certain marriages, which had been solemnized within the British territories in India by ordained ministers of the Church of Scotland, as by law established, were to all intents and purposes valid marriages, a declaratory statute was passed in that year (58 Geo. 3, c. 84) to quiet all doubts re-

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(a) The statements contained in this chapter are for the most part given on the authority of the Marriage Laws Commissioners, 1863.

specting such marriages, and it was thereby declared and enacted that all such marriages solemnized before 31st December, 1818, should have the same force and effect as if solemnized by clergymen of the Church of England, according to the rites and ceremonies of that Church. It was further declared and enacted that from and after the 31st December, 1818, all marriages between persons, both or one of whom shall have signed a declaration in writing, that they, or he or she, as the case may be, hold communion with the Church of Scotland by law established, if solemnized by ordained ministers of that church appointed by the East India Company to officiate as chaplains within the said territories, shall have the same force and effect as if such marriages had been solemnized by clergymen of the Church of England, according to the rites and ceremonies of that church. The statute, however, did not proceed to declare any such marriages to be invalid, if the preliminary declarations should have been omitted, and it left the law, in all cases where marriages should be solemnized otherwise than under its provisions, as it was before.

Numerous marriages, on the other hand, appear to have been contracted by European British subjects in India *per verba de presenti* without the intervention of any minister in Holy Orders, inasmuch as for a century after the first establishment of the English in India there was no provision made for chaplains, and even then in the most modest proportions. The Indian courts have always sustained the validity of such marriages, and notwithstanding the decision of the House of Lords in *The Queen v. Millis* in 1844, which declared the presence of a minister in Holy Orders to be essential to the validity of a marriage under the law of England, as it existed prior to Lord Hardwicke's

Act, the supreme court of Bombay in 1849 held that a marriage, celebrated between two members of the Church of England at Surat by an Independent missionary not in Holy Orders, was a valid marriage (a).

*Report of Royal Commission, 1850.*] The decision of the House of Lords in *The Queen v. Millis* could not fail to cause uneasiness in regard to certain marriages contracted between European British subjects in India ; and the Royal Commissioners appointed to inquire into the state and operation of the law of marriage, in their second report presented to Her Majesty in 1850, recommended,—

1. That all marriages heretofore had within the territories under the Government of the East India Company between any persons whatever, whether by a minister of the Scotch Church not being a chaplain, or by any minister of any other persuasion, or by any layman, where the only objection is that they have not been solemnized by a priest, shall be good and valid.

2. That the marriage law of India shall, *mutatis mutandis*, be made conformable to the law now existing in England.

*Act of 14 & 15 Vict. c. 40.*] Accordingly in the year 1851 an Act for Marriages in India (14 & 15 Vict. c. 40) was passed, under the provisions of which, where one or both of the parties intending to be married is or are a person or persons professing the Christian religion, their marriage may be solemnized in India. The provisions of this statute, as far as its enactments

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(a) *Maclean v. Christall*, 1849, 7 Notes of Cases. It was there held that the portion of the common law requiring the presence of an ordained minister at a marriage does not and never did exist in India.

are concerned, are of an enabling character. It creates no statutory nullity. It declares that all marriages heretofore solemnized in India by persons not in Holy Orders, if not otherwise invalid, shall be deemed and held to be valid in law to all intents and purposes. It provides that nothing in the Act shall invalidate or affect any marriage which may be solemnized in India by persons in Holy Orders, or any marriages which may be solemnized under the provisions of 58 Geo. 3, c. 84, or any other marriages which, under the laws for the time being in force in India, might have been there solemnized in case the Act had not been passed ; and it empowers the Governor-General to make laws for the registration of all such marriages, with a view to the transmission of the evidence of such marriages, when desirable, to the Registrar General of births, deaths, and marriages in England. On the other hand the enactments of the Act, as regards the constitution of the contract of marriage, are confined to providing that marriage registrars shall be appointed for the purposes of the Act, and districts shall be assigned to such registrars, and that after due notice has been given to the registrar of the district within which each party intending to be married dwells, and such registrar has issued a certificate or certificates of such notice having been given, a marriage may be solemnized, according to such form and ceremony as the parties intending to be married may see fit to adopt, in the presence of some marriage registrar, to whom the certificate or certificates shall be delivered, and of two or more witnesses ; provided also that in some part of the ceremony each of the parties shall declare that he or she, as the case may be, knows of no lawful impediment to their marriage, and each of the parties shall call upon the persons there present to

witness that they take each other respectively for lawful husband and wife, or to the like effect.

The Act then goes on to provide for the due registration of all such marriages, and for the periodical transmission by the marriage registrars of the certificates of such marriages, and of the register books themselves, when they have been filled, to the secretary of the Indian Government.

Prior to the passing of the above Act a public register book of marriages had been kept in each of the Indian presidencies, under the authority of the East India Company, and it was usual to transmit an authenticated copy of the entries in each register book from time to time to the secretary of the East India Company in London, and such copy was by him deposited and kept amongst the archives of the Company. The entries of marriages in any of such copies, when produced by an officer of the Company, have always been admitted by the House of Lords and by the courts at Westminster Hall in proof of the solemnization of such marriages. The provisions for the registration of marriages under 14 & 15 Vict. c. 40, have become applicable to marriages solemnized in India after January 1, 1852, and due regulations for this purpose have been made by Indian Acts in pursuance of the 20th and 21st sections of the Imperial Act.

*Indian Acts for marriages.]* An Indian Act was passed by the Governor-General of India in Council, intituled An Act for giving effect to the provisions of an Act of Parliament passed in the 15th year of the reign of her present Majesty, intituled An Act for Marriages in India. The object of this Indian Act (Act V. of 1852) was more particularly to give effect to the provisions of the Imperial Statute as regarded the solemn-

ization of marriages in the presence of a marriage registrar. Further legislation in India took place in 1860 and in 1864, but the law which governs at the present time the marriages of European British subjects in India is the Indian Marriage Act, 1865, which received the assent of the Governor General of India in Council on 23rd February, 1865, and is intituled An Act to provide for the Solemnization of Marriages in India of Persons professing the Christian Religion. According to its provisions marriage may be solemnized between European British subjects—

1. By any person who has received episcopal ordination, provided it be solemnized according to the rules, rites, ceremonies, and customs of the church of which he is a minister.

2. By any clergyman of the Church of Scotland, provided it be solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland.

3. By or in the presence of a marriage registrar, under the provisions of the statute 14 & 15 Vict. c. 40, or of Act V. of 1852 of the Governor General of India in Council.

4. By any minister of religion who, under the provisions of the Act, has obtained a licence to solemnize marriages. It is further provided that the declaration and certificate required by 58 Geo. 3, c. 84, and Act XXIV. of 1860 (for the solemnization of marriages in India by ordained ministers of the Church of Scotland), shall be no longer required.

Two other important provisions of this Act deserve attention: one of them provides that all marriages solemnized in India before May 1, 1865, by persons who have not received episcopal ordination, or who have not otherwise received express authority to solemnize such marriages under Acts of Parliament, or Acts of the Governor General of India in Council,



shall, if not otherwise invalid, be deemed valid to all intents and purposes. The other provides that from and after May 1, 1865, all marriages which may be solemnized in India between persons, both or one of whom shall profess the Christian religion, otherwise than in accordance with the provisions of the Act in regard to the persons by whom marriage may be solemnized, shall be *void*.

The terms of this last provision are certainly too absolute, inasmuch as the neglect or omission of any rule, rite, ceremony, or custom of the Church of which the celebrant is a minister, or of any provision of 14 & 15 Vict. c. 40, or of Act V. of 1852, in regard to marriage registrars, or any disqualification of the celebrant, of which the parties to the marriage may be unwitting, would render a marriage null and void between parties, who may have acted in perfect good faith as respects their intention to contract marriage according to the provisions of the law.

*Conflict between the Indian Act of 1865 and imperial statutes.]* It is to be observed that the Indian Act of 1865, in declaring all marriages solemnized in India otherwise than in accordance with its provisions as above stated, to be null and void, is in evident conflict with the provisions of the imperial statute 4 Geo. 4, c. 91, under which it is enacted that all marriages solemnized within the British lines by any chaplain or officer, or other person officiating under the orders of the commanding officer of a British army serving abroad, shall be deemed and held to be as valid in law as if they had been solemnized within her Majesty's dominions with a due observance of all forms required by law.

It is of the more importance that attention should be drawn to this inconvenient conflict of law, inasmuch

as the imperial statute 28 & 29 Vict. c. 64, which provides that every law made by the legislature of any of her Majesty's possessions for the purpose of establishing the *validity* of any marriage contracted in such possessions shall be effectual for such purpose within all parts of her Majesty's dominions, whilst it thus gives effect throughout her Majesty's dominions to the clauses of the Indian Act which render past marriages valid, does not give like effect to the clauses of that bill which annul and avoid future marriages; and although under the provisions of 3 & 4 Will. 4, c. 85, the Indian Act will have the same force and effect within and throughout the Indian territories as any Act of Parliament would and ought to have within those territories, it will not have the like force and effect within all parts of her Majesty's dominions. It may thus happen that a marriage solemnized in India, within the lines of a British army, under the provisions of 4 Geo. 4, c. 91, although not valid according to the Indian Act, will be upheld in an imperial or colonial court of justice as being valid under an imperial statute, precisely as a marriage solemnized in a foreign country under the provisions of 13 & 14 Vict. c. 68 will be upheld in an imperial or colonial court, although not valid according to the *lex loci*.

*Impediments to marriage.*] There is no direct provision made by 14 & 15 Vict. c. 40, or by the Indian Act, No. 5 of 1865, as to what are to be regarded as lawful impediments to the solemnization of marriage. But the 28 & 29 Vict. c. 64, which will give effect to the Indian Act, for the purpose of establishing retrospectively the validity of an Indian marriage within all parts of her Majesty's dominions, provides that nothing in that statute contained shall give effect or

validity to any marriage unless, at the time of such marriage, both of the parties thereto were according to the law of England competent to contract the same. The operation of this provision of the imperial statute may deserve consideration in its bearing upon the second marriage in India of an European British subject whose first marriage may have been dissolved by the sentence of a colonial court according to the provisions of a colonial law, such as that of the colony of South Australia (a).

*Registration.]* Due provision has been made by the Indian Act, No. 5 of 1865, for the registration of all marriages solemnized in accordance with its provisions, as well as for the transmission to the Secretary of State for India of the certificates of the marriages, of which the Governor General of India in Council may desire that evidence should be transmitted to England, for the purpose of being delivered to the Registrar General of births, deaths, and marriages.

*Registrar General to allow searches and give certified copies.]* The certificates which are delivered to the Registrar General in England are to be kept in the General Register Office as is provided by 6 & 7 Will. 4, c. 86, concerning certified copies of registers in England; and in like manner indexes thereof are to be made, searches permitted, and certified copies (sealed or stamped with the seal of the office) given. Every certified copy of a certificate, purporting to be sealed or stamped with the seal of the General Register Office, "shall be received as evidence of the marriage to which the same relates, without further proof of

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(a) See *post*, p. 302.

such certificate or of any entry therein" (14 & 15 Vict. c. 40, s. 22). The fee for a particular search is 1s. ; for a certified copy 2s. 6d. (b).

SECT. 2.—OF THE MARRIAGES OF EUROPEAN BRITISH  
SUBJECTS IN THE COLONIES.

The most important Imperial statute which bears upon the marriages of European British subjects in the colonies is 28 & 29 Vict. c. 64 (June 29, 1865), under which every law made or to be made by the legislature of any of her Majesty's possessions abroad for the purpose of establishing the validity of any marriage previously contracted in such possession shall have and be deemed to have had from the date of the making of such law, the same force and effect for the purpose aforesaid within all parts of her Majesty's dominions, as such law may have had or may hereafter have within the possession for which the same was made: providing that nothing in this law contained shall give any effect or validity to any marriage, unless at the time of such marriage both of the parties thereto were, according to the law of England, competent to contract the same.

The passing of this Act was occasioned by the previous passing of various Acts by the legislatures of divers of her Majesty's possessions abroad, for the purpose of establishing the validity of certain marriages previously contracted therein. Thus the Legislature of New South Wales in 1855 had passed an Act whereby every marriage (with certain exceptions) celebrated in that colony before the commencement of

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(b) The official agent of the Administrator General, at the India Office, London, has charge of copies of all ecclesiastical registers; fees for special search 1s., certificate 10s.

that Act by any minister of religion or person ordinarily officiating as such, was declared to be, notwithstanding any irregularity of form, a perfectly legal and valid marriage to all intents and purposes. Similar laws have been passed at various times by most of the Australian colonies, and it was in consequence of doubts having been suggested as to the provisions in such colonial Acts for the confirmation of previous marriages being operative beyond the limits of each colony, that the Imperial statute was passed, declaring explicitly that these retrospective enactments should have their intended effect throughout her Majesty's dominions.

*Colonial Acts for divorce.*] There is a provision in the Imperial statute which may be operative in a manner not intended by the Imperial Legislature, in consequence of the provisions of the English Divorce and Matrimonial Causes Act having also been adopted *mutatis mutandis* by the local legislatures in divers of her Majesty's possessions abroad. They have been adopted in South Australia in 1858, in Tasmania in 1860, in Victoria in 1865, in Queensland in 1866. The colonial Acts have also followed the example of the Imperial Act, in granting to the parties, whose marriage has been dissolved, liberty to marry again. But doubts may be raised whether such colonial Acts, not having been confirmed by any Imperial statute, would be operative beyond the limits of each colony in which they may have been passed ; yet the right of suing for dissolution of marriage in any of the colonial courts is not confined to parties domiciled in the colony, but a suit is permitted to be instituted by any husband and by any wife. Again, as the Divorce and Matrimonial Act of South Australia has been in

operation since 1858, and a similar Act has been in force in Tasmania since 1860, parties who have been divorced in one or other of those colonies may have contracted a second marriage in another colony; for instance, in Queensland before the passing of the Marriage Act of the latter colony on 12th September, 1864, whereby every marriage celebrated in that colony before the commencement of that Act by any minister of religion, or person ordinarily officiating as such (notwithstanding any irregularity of form), is declared to be valid to all intents and purposes. But the operation of the Imperial statute, as regards the second marriage of a divorced party, will be to limit the effect of this retrospective provision of the Queensland Act to that colony, unless the party was competent, according to the law of England, to contract a marriage. Doubts also may be raised as to the validity of a second marriage contracted by parties, whose first marriage may have been dissolved by the court of a colony, within which they had not a real domicile (*a*).

*Void marriages.*] The general rule of colonial legislation has been in accordance with the principle of 4 Geo. 4, c. 76, which declares marriages to be null and void on account of non-observance of the statutory provisions only in the case where both parties to a marriage have knowingly and wilfully violated them (*b*).

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(*a*) *Pitt v. Pitt*, 3 Macqueen, p. 627.

(*b*) As to affinity, the Act of 5 & 6 Will. 4, c. 54 (Lord Lyndhurst's Act), would not affect the law of marriage in any colony in which a different law has prevailed, the Act being limited in its operation to the inhabitants of Great Britain and Ireland; but the parties must have been domiciled in the country at the time of the marriage: *Brook v. Brook*, 9 H. L. Cases, 193. In some of the Australian colonies marriage with a deceased wife's sister is permitted.

*Registration.*] No provision has been made by any Imperial statute for the registration of the marriages of European British subjects solemnized in the colonies; but this has been sufficiently provided for by local Acts. The Marriage Laws Commissioners think that it should be declared by an Imperial statute that certified copies of entries in any colonial register book of marriages, kept under the provisions of any colonial Act, shall be admissible in any court of justice or elsewhere, pursuant to the provisions of 14 & 15 Vict. c. 99, as to books of a public nature.

The following information as to the registration of marriages in the British colonial possessions is furnished by the Registrar General of England in his thirtieth Annual Report, issued in 1869 :—

*Australian Colonies: Victoria.* By an Act of the Legislative Council, passed in 1853, the registration of marriages (as well as births and deaths) was established, and a department for that purpose was organized under the direction of the present able Registrar General, Mr. W. H. Archer. The schedules in use in Victoria were drawn up in accordance with the recommendations of the Registration Committee of the Statistical Society of London, and the records of marriage, birth, and death contain many more details than are given in the English schedules. Marriages, whether in places of religious worship, in registrars' offices, or in private dwellings, are regulated by the provisions of "An Act to consolidate the Laws relating to Marriage, and to Deserted Wives and Children, and to Divorce and Matrimonial Causes" (28 Vict. No. 268), and are registered by the minister, Registrar General, or other officer by whom they are celebrated.

Similar arrangements are in force in the other colonies of Australasia.

*North American Colonies : Upper Canada (June, 1867).* A Board of Registration and Statistics exists in Canada, composed of the Minister of Agriculture, the Receiver General, and the Provincial Secretary. Returns of births, deaths, and marriages are annually forwarded to this Board. The Act of the Consolidated Statutes of Upper Canada (c. 72) provides, that every clergyman or minister who celebrates a marriage in Upper Canada shall enter in a book a true record of the marriage, and shall, at the end of each year, return a complete list of the marriages solemnized by him during the year to the registrar of the county.

*Lower Canada (May, 1867).* The clergy of the various denominations in their respective districts or counties are required to deposit a copy of their registers of baptisms, marriages, and burials at the close of each year with the prothonotaries and clerks of circuit courts. These officers send to the Government every year an abstract statement of the numbers of baptisms, marriages, and burials recorded in the registers so deposited ; but they keep no index of names.

*Nova Scotia (October, 1867).* The secretary of the Board of Statistics, in the department of the financial secretary, is *de facto* the Registrar General of the province. The deputy registrars for the registration of births, deaths and marriages, send quarterly returns to the Board of Statistics of the entries and records made by them in their respective districts. Registration is conducted under the "Amended Registration



Act" (passed on 7th May, 1866), which requires that particulars of marriage shall be recorded by clergymen and deputy registrars.

*Newfoundland (June, 1867).*—By an old law of 1833 marriages are registered in the office of the Colonial Secretary, who is empowered to grant certificates. The Colonial Secretary's department is charged with the general registry, the system of which is unsatisfactory and imperfect.

*Bermuda (May, 1867).*—By an Act of 1865, the registration of births, marriages, and deaths was established, and a Registrar General and district registrars were appointed, whose duties, fees, &c., were prescribed by the Act. Alphabetical indexes were to be made and kept to facilitate reference to the registers, and the Registrar General was to compile and publish every year a summary of births, marriages, and deaths registered.

*New Brunswick (May, 1867).*—The clerks of the peace in the several counties are required to keep a record of marriages.

*Prince Edward Island (Dec. 1867).*—By a local Act the parties authorized to solemnize matrimony are required to submit, within a period of six months, a certificate of the celebration of each marriage solemnized by them to the surrogate of the island, and the surrogate is required to record such certificates.

*British Columbia (May, 1868).*—Marriages should be registered, but the marriage ordinance is said to be

defective, and contains no provision for the appointment of a registrar general of marriages.

*West Indies.* In Jamaica and in the other West Indian islands, there is in general due provision made for the registration of marriages by local Acts or ordinances.

*Eastern Possessions.—Ceylon (Feb. 1868).*—By an Ordinance of 1847 provision was made for the better registration of marriages, births, and deaths. The provisions in relation to the registration of marriages were amended by Ordinance in 1863 and 1865. Notice of intended marriage must be given to the registrar of the district for publication in his office and elsewhere, and at any time between twenty-one days and three months after the entry of the notice the registrar is required to issue the certificate for marriage, except in cases where it is forbidden by some one whose consent is necessary. Marriages may be solemnized in registered places of worship, or contracted in the offices of the registrars. Particulars of marriages to be sent by ministers to registrars for enrolment in the registers. Legal marriage between parties legitimate children of same parties before marriage. The Registrar General of the colony keeps certified copies of all the registers of marriages, births, and deaths occurring therein.

*Hong Kong (Sep. 1868).*—The Governor states that reliable returns of marriages, births, and deaths are not procurable. He deems it "inexpedient to run the risk of further exciting the suspicions and wounding the prejudices of the large Chinese population, without the prospect of any better result than the compilation of inaccurate statistics."

*Mauritius* (July, 1867). The system of registration of births, deaths, and marriages is similar to that of France, and information may be obtained relative to these matters from the Civil Status Office, or the Governor of the colony.

SECT. 3.—MARRIAGES OF BRITISH SUBJECTS IN FOREIGN COUNTRIES.

Four classes of marriages of British subjects in foreign countries are recognized by the law of England, viz. :

1. Marriages according to the *lex loci contractûs* ;
2. Marriages in the houses or chapels of ambassadors, and in the British factories ;
3. Marriages within the lines of a British army serving abroad ; and
4. Marriages under the Consular Marriage Act (13 & 14 Vict. c. 68).

(1.) All marriages of British subjects contracted in foreign countries, according to the forms required by the *lex loci contractûs*, are recognized as valid marriages by the English courts except in cases where the parties would not be competent, by the law of England, to contract a valid marriage. (2.) It may not, however, be always possible for a British subject in a foreign country to avail himself of the forms of the *lex loci contractûs*, by reason of a difference of religion, as in Mahomedan or heathen countries, or by reason of a difference of confession, as in some Christian countries where marriage can only be lawfully solemnized between parties who confess themselves to be members of the established church. Accordingly, in foreign countries, where either by express treaty or by the comity of

nations the privilege of extritoriality has been enjoyed by British subjects within any defined limits, such as the factory of a trading company or the hotel of an ambassador, the marriage of a British subject solemnized within such limits according to the law of England, as it existed antecedent to the passing of Lord Hardwicke's Act, has always been upheld by English courts as a valid marriage. (3.) Upon a similar principle, the marriage of a British subject solemnized according to the same law within the lines of a British army serving abroad has been upheld as a valid marriage by English courts. (4.) The provisions of the Consular Marriage Act will presently be noticed.

*Statutes to remove doubts as to marriages abroad*]. In consequence of an absence of judicial recognition of some marriages of British subjects abroad, it was thought well to remove all doubts respecting any of the three first-mentioned classes of marriages by passing a declaratory statute in 1823 (4 Geo. 4, c. 91); under which it was declared and enacted that all marriages solemnized by a minister of the Church of England in the chapel or house of any British ambassador or minister residing within the country, to the court of which he is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing in such factory, and all marriages solemnized within the British lines by any chaplain or officer or other person officiating under the orders of the commanding officer of a British army serving abroad, shall be deemed and held to be as valid in law, as if they had been solemnized within Her Majesty's dominions with a due observance of all forms required by law.



presence of the officer command-

between the like parties, which  
 ized according to any religious rites or  
 contracted *per verba de præsenti* in any  
 ry or place, and registered by or under  
 of any British consul-general, consul, or  
 , exercising his functions within such foreign  
 or place, the signatures of the parties being  
 in the register.

*provisions of the Consular Marriage Act.]* The main  
 of this Act was to afford prospectively greater  
 facilities for the marriages of her Majesty's subjects  
 resident abroad, and more especially to facilitate the  
 marriages of British subjects, who, though they had  
 not lost the character of British subjects, had by a  
 long residence in a foreign country formed local con-  
 nections, and desired to intermarry with natives and  
 other than British subjects. For this purpose any  
 British consul general, consul, vice-consul, or con-  
 sular agent, specially authorized in writing under the  
 hand of one of her Majesty's principal secretaries of  
 state, may allow to be solemnized in his presence  
 according to the rites of the United Church of England  
 and Ireland, or according to such other form and  
 ceremony as the parties thereto may see fit to adopt,  
 or may personally solemnize, if the parties so desire it,  
 any marriage, one or both of the parties thereto being  
 a subject or subjects of this realm, provided always  
 that such marriages shall be solemnized at the British  
 consulate with open doors, between the hours of 8  
 and 12 in the forenoon, in the presence of two or  
 more witnesses, and that, in the solemnization of any  
 such marriage not solemnized according to the rites of

The practice of maintaining British factories in foreign countries under the protection of British law may be said to have totally ceased in Europe, although the trading companies, to which the factories belonged, have in some cases continued to carry on their trade after the abolition of their ex-territorial privileges. It has accordingly been found advisable in certain cases, where the chaplains of such companies, or chaplains appointed by the Bishop of London, have continued to solemnize marriages between British subjects in the chapels of such trading companies or in private houses before witnesses, to pass declaratory statutes to remove all doubts as to the validity of such marriages.

A general provision was made in 1849 for removing all doubts retrospectively as to the validity of any such marriages by 13 & 14 Vict. c. 68, s. 20. This statute has dealt retrospectively with three classes of marriages respecting which doubts might be raised as not being within the scope of 4 Geo. 4, c. 91.

1. All marriages, both or one of the parties being subjects or a subject of this realm, which before the passing of this Act have been solemnized in any foreign country or place, or on board a British vessel of war on any foreign station, by a minister in holy orders according to the rites and ceremonies of the Church of England and Ireland, or by an ordained minister of the Church of Scotland.

2. All marriages between the like parties, which have been solemnized according to any religious rites and ceremonies, or contracted *per verba de presenti*, in any foreign country or place in the presence of any British ambassador, minister, chargé d'affaires, consul-general, consul, or vice-consul, exercising his functions in the foreign country or place in which such marriages have been had, or on board a British vessel of war on a

foreign station in the presence of the officer commanding such vessel.

3. All marriages between the like parties, which have been solemnized according to any religious rites or ceremonies, or contracted *per verba de præsenti* in any foreign country or place, and registered by or under the authority of any British consul-general, consul, or vice-consul, exercising his functions within such foreign country or place, the signatures of the parties being written in the register.

*Provisions of the Consular Marriage Act.]* The main object of this Act was to afford prospectively greater facilities for the marriages of her Majesty's subjects resident abroad, and more especially to facilitate the marriages of British subjects, who, though they had not lost the character of British subjects, had by a long residence in a foreign country formed local connections, and desired to intermarry with natives and other than British subjects. For this purpose any British consul general, consul, vice-consul, or consular agent, specially authorized in writing under the hand of one of her Majesty's principal secretaries of state, may allow to be solemnized in his presence according to the rites of the United Church of England and Ireland, or according to such other form and ceremony as the parties thereto may see fit to adopt, or may personally solemnize, if the parties so desire it, any marriage, one or both of the parties thereto being a subject or subjects of this realm, provided always that such marriages shall be solemnized at the British consulate with open doors, between the hours of 8 and 12 in the forenoon, in the presence of two or more witnesses, and that, in the solemnization of any such marriage not solemnized according to the rites of



the United Church of England and Ireland, in some part of the ceremony and in the presence of the consul and the witnesses, each of the parties shall solemnly declare that they know not of any lawful impediment to their marriage, and shall call the parties present to witness that they take each other respectively to be lawful husband and wife (*a*). Due provision has been made for the registration of all such marriages in duplicate books according to the form required by 6 & 7 Will. 4, c. 86, and for the yearly transmission of copies of all entries in such books through one of her Majesty's principal secretaries of state to the Registrar General in England.

The Marriage Laws Commissioners state that the Act has been found to work remarkably well, but it had been represented to them that there are some particulars in which it might be improved. A great difficulty in the way of many persons arises from the regulation that *both parties* must have dwelt within the district of the consul, before whom the marriage is to be solemnized, not less than one calendar month before notice can be given of their intention to intermarry; and that no marriage can be solemnized until after the expiration of seven days, if the marriage is to be by licence, and of twenty-one days, if it is to be without licence, after the notice has been given. It happens, however, not unfrequently that one of the parties intending to contract marriage is resident in England, or in another consular district, and cannot afford to leave his occupation for so long a time, or that a young lady having previously made an engagement in England or elsewhere to be married to a

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(*a*) Marriages performed in British consulates are not legal marriages if they are in any respect contrary to the statute law of England.

party, who has gone out to China or some other distant country before the marriage has been celebrated, goes out to be married, and is obliged to reside in the foreign country without any relative to protect her for five or seven weeks, as the case may be, before the marriage can be solemnized.

This regulation causes great inconvenience to individuals without any corresponding advantage to the public, and the Commissioners think it would be sufficient if the party only who gives the notice to the Consul should be required to be resident in the consular district for a calendar month next preceding the giving of the notice; and they recommend that the Act should be amended in this particular. If the other requirements of the Act are maintained, as regards the time which is to elapse after notice has been given before the marriage can be solemnized, and the declarations which are to be made by both parties, where the marriage is to be by licence, they think it will be unnecessary to require the party coming from a distance to have given any notice to the local authorities of the country where such party may have been previously resident.

*Marriages between British subjects and foreigners.]*

As between British subjects there is no question as to the validity of marriages abroad performed under the authority of the Consular Marriage Act; but in the case of mixed marriages between a British subject and a subject of a foreign country, a difficulty arises where the *lex loci* does not recognize as valid a matrimonial contract entered into at the British Consulate. Out of the British dominion such marriages may be questioned, and, in fact, cases have occurred where a marriage in which one party was a French, a Belgian

or a Spanish subject, and the other a British subject, the laws of France, Belgium, and Spain not recognizing such marriages. The Secretary of State for Foreign Affairs has, therefore, by circular instructed our ambassadors and consuls specifically to warn parties in all cases of a mixed marriage to be performed in a British embassy or in a consulate, that the marriage is not necessarily valid without the dominions of Her Majesty (a).

Soon after the Consular Marriage Act was passed a Consul in Belgium reported that no marriage is legally valid, as regards Belgian subjects, unless it has been solemnized in every respect in conformity with the Belgian regulations under the Code Napoleon. In Spain the authorities seized a Spanish woman who had presumed to marry an Englishman at the British Consulate at Barcelona; and the Queen's Advocate of that day would not take upon himself to say that the marriage should be deemed valid if contrary to Spanish law, as that law must prevail and regulate the status of the parties so long as they resided in Spain. In France, Switzerland, and other countries the legal validity of such mixed marriages, would be open to doubt.

To meet this difficulty the Marriage Laws Commissioners propose that the parties should be enabled to have their marriage solemnized, if they so desire it, in any place of religious worship in which marriage may be solemnized according to the *lex loci*; and that the Consul should be empowered to be present and to register the marriage. But they think that no mixed marriage solemnized by the Consul himself ought to

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(a) See circulars issued from the Foreign Office as to mixed marriages, Appendix, No. XI., *post*.

be rendered valid by British law, if invalid by the *lex loci*; and they recommend that the Act be further amended in this particular.

*Marriages in ambassador's chapels or houses abroad.]* Ambassadorial marriages have been permitted to be solemnized without any previous residence being required, or other formalities, except in some embassies a declaration on oath that there is no legal impediment. There is nothing to prevent any two persons starting from London by the mail at night, making their declaration on the morrow, and being married the next morning at the embassy chapel. At some embassies no declaration is required that the parties can legally contract a marriage, and no questions are asked. This gives very great facility for clandestine marriages; and it has been suggested that the provisions of the Consular Marriage Act, modified in regard to residence, should be extended to these marriages in British embassies.

*Marriages on board British vessels of war.]* A class of marriages is occasionally solemnized abroad between European British subjects, which the framers of Geo. 4, c. 91, omitted to notice, although it does not seem to be distinguishable in principle from a marriage solemnized within the lines of a British army serving abroad, namely a marriage solemnized on board a British vessel of war on any foreign station. There does not appear to have been any judicial recognition of the validity of such a marriage, although four or five at least of such marriages are annually solemnized. The framers, however, of the Consular Marriage Act took care to remove all doubts respecting any previous marriage solemnized on board of a British vessel of war by a minister of the

Church of England or by a minister of the Church of Scotland, and respecting any previous marriage solemnized according to any religious rite or ceremony, or contracted *per verba de presenti* on board a British vessel of war on any foreign station in the presence of the officer commanding such vessel, but they made no provisions for future marriages. On the other hand, since the passing of the Consular Marriage Act in 1849, seventy or eighty of such marriages have been solemnized, the certificates of which are recorded in the registry of the diocese of London, and it would appear from these certificates that about one-fourth of the number of such marriages have been solemnized or contracted in the presence of the commanding officer of the vessel, and not in the presence of any minister of religion (*a*). For this class of marriages the Queen's regulations for the navy prescribe the steps to be taken for the purpose of preserving evidence of the ceremony in England (*b*).

*Marriages on board merchant ships.*] There is a further class of marriages of which no certificate has ever been recorded in the registry of the diocese of London, but for proof of which provision has been made by the Merchant Shipping Act, 1854.

It is provided by section 282 of that Act that every master of a merchant ship shall enter in the official log book of the vessel every marriage taking place on

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(*a*) When solemnized in distant parts by an ordained minister of religion, marriages on board ship are probably subject to the law which prevailed in England previously to the passing of Lord Hardwicke's Act. In a heathen land marriages between British subjects may be performed by a minister of the Church of England either on board ship or on shore.

(*b*) See extract from the Regulations, Appendix, No. VIII., *post*.

board his vessel, with the names and ages of the parties, whilst there is no statutory authority for the solemnization of any such marriage on board of a British merchant ship, nor has any statute ever been passed to give retrospective effect to any such marriage. In the case however of both parties being British subjects emigrating to a British colony, if their marriage has been solemnized on board a British merchant vessel by a priest, in holy orders, its validity would probably be upheld in an English court upon the analogy of legal decisions, that British emigrants carry with them the common law of England, until they become subject *ratione loci* to some other law.

banns published.

dwel, according to the form of words prescribed by the rubric prefixed to the office of matrimony in the Book of Common Prayer, upon three Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service (if there shall be no morning service in such church or chapel upon the Sunday upon which such banns shall be so published), immediately after the second lesson; and whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries the banns shall in like manner be published in the church or in any such chapel as aforesaid belonging to such parish or chapelry wherein each of the said persons shall dwell; and that all other the rules prescribed by the said rubric concerning the publication of banns and the solemnization of matrimony, and not hereby altered, shall be duly observed; and that in all cases where banns shall have been published the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever.

Bishop, with consent of patron and incumbent, may authorize publication of banns in any public chapel.

3. And be it further enacted, That the bishop of the diocese, with the consent of the patron and the incumbent of the church of the parish in which any public chapel, having a chapelry thereunto annexed, may be situated, or of any chapel situated in an extra-parochial place, signified to him under their hands and seals respectively, may authorize, by writing under his hand and seal, the publication of banns and the solemnization of marriages in such chapel for persons residing within such chapelry or extra-parochial place respectively; and such consent, together with such written authority, shall be registered in the registry of the diocese (a).

Notice to be placed in such chapel.

4. Provided always, and be it enacted, That in every chapel in respect of which such authority shall be given as aforesaid there shall be placed in some conspicuous part of the interior of such chapel a notice in the words following: "Banns may be published and marriages solemnized in this chapel."

Provisions relative to marriage registers extended to chapels so authorized as aforesaid.

5. Provided always, and be it further enacted, That all provisions now in force, or which hereafter may be established by law, relative to providing and keeping marriage registers in any parish churches, shall extend and be construed to extend to any chapel in which the publication of banns and solemnization of marriages shall be so authorized as aforesaid, in the same manner as if the same were a parish church; and everything required by law to be done relative thereto by the churchwardens of any parish church shall be done by the chapelwarden or other officer exercising analogous duties in such chapel.

Book to be

6. And be it further enacted, That on or before the said

(a) See further provisions as to the licencing of chapels for marriages by the bishop; 6 & 7 WILL. 4, c. 85, ss. 26 to 33, *post*.

## APPENDIX.

### No. I.

#### STATUTES RELATING TO MARRIAGE (a).

4 GEORGE 4, c. 76.

*An Act for Amending the Laws respecting the Solemnization of  
Marriages in England.* [18th July, 1823.]

WHEREAS it is expedient to amend the laws respecting the solemnization of marriages in England: Be it enacted by the king's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of November next ensuing the passing of this Act so much of an Act passed in the twenty-sixth year of the reign of King George the Second, intituled, "An Act for the better Preventing of Clandestine Marriages," as was in force immediately before the passing of this Act, and also an Act passed in the present session of Parliament, intituled, "An Act to Repeal Certain Provisions of an Act passed in the Third Year of his present Majesty, intituled, 'An Act to Amend certain Provisions of the Twenty-sixth of George the Second, for the better Preventing of Clandestine Marriages,'" shall be and the same are hereby repealed; save and except as to any acts, matters, or things done under the provisions of the said recited Acts or either of them before the said first day of November, as to which the said recited Acts shall respectively be of the same force and effect as if this Act had not been made; save also and except so far as the said recited Acts or either of them repeal any former Act, or any clause, matter, or thing therein contained.

26 G. 2, c. 33.

4 G. 4, c. 17,

repealed.

2. And be it further enacted, That from and after the first day of November all banns of matrimony shall be published in an audible manner in the parish church, or in some public chapel, in which chapel banns of matrimony may now or may hereafter be lawfully published, of or belonging to such parish or chapelry wherein the persons to be married shall

Banns,  
where,  
when, and  
how pub-  
lished, and  
marriage to  
be solemn-  
ized where

(a) In all the statutes contained in this Appendix, such parts as have been repealed are printed in *italics*.



of the parties resided for 15 days before.

Where caveat entered no licence to issue till matter examined by Judge.

Parishes where no church or chapel, and extra-parochial places, deemed to belong to any adjoining parish, &c.

Where churches are demolished or under repair, banns to be proclaimed in a church or chapel of an adjoining parish, &c.

parish or chapelry within which the usual place of abode of one of the persons to be married shall have been for the space of fifteen days immediately before the granting of such licence.

11. And be it further enacted, That if any caveat be entered against the grant of any licence for a marriage, such caveat being duly signed by or on the behalf of the person who enters the same, together with his place of residence and the ground of objection on which his caveat is founded, no licence shall issue till the said caveat, or a true copy thereof, be transmitted to the judge out of whose office the licence is to issue, and until the judge has certified to the register that he has examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the licence for the said marriage, or until the caveat be withdrawn by the party who entered the same.

12. Provided always, and be it further enacted, That all parishes where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually solemnized every Sunday, and all extra-parochial places whatever, having no public chapel wherein banns may be lawfully published, shall be deemed and taken to belong to any parish or chapelry next adjoining, for the purposes of this Act only; and where banns shall be published in any church or chapel of any parish or chapelry adjoining to any such parish or chapelry where there shall be no church or chapel, or none wherein divine service shall be solemnized as aforesaid, or to any extra-parochial place as aforesaid, the parson, vicar, minister, or curate publishing such banns shall, in writing under his hand, certify the publication thereof, in the same manner as if either of the persons to be married had dwelt in such adjoining parish or chapelry.

13. Provided always, and be it further enacted and declared, That if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service, during the repair or rebuilding of the church as aforesaid; and where no such place shall be so licensed, then, during such period as aforesaid, the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed; and all marriages heretofore solemnized in other places within the said parishes or chapelries than the said churches or chapels on account of their being under repair, or taken down in order to be rebuilt, shall not be liable to have their validity questioned on

that account, nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever.

14. And be it further enacted, for avoiding all fraud and collusion in obtaining of licences for marriage, That before any such licence be granted one of the parties shall personally swear before the surrogate or other person having authority to grant the same, that he or she believeth that there is no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced *in any ecclesiastical court (a)*, to bar or hinder the proceeding of the said matrimony according to the tenor of the said licence; and that one of the said parties hath, for the space of fifteen days immediately preceding such licence, had his or her usual place of abode within the parish or chapelry within which such marriage is to be solemnized; and where either of the parties, not being a widower or widow, shall be under the age of twenty-one years that the consent of the person or persons whose consent to such marriage is required under the provisions of this Act has been obtained thereto: Provided always, that if there shall be no such person or persons having authority to give such consent, then, upon oath made to that effect by the party requiring such licence, it shall be lawful to grant such licence notwithstanding the want of any such consent.

15. Provided always, and be it further enacted, That it shall not be required of any person applying for any such licence to give any caution or security, by bond or otherwise before such licence is granted, anything in any Act or Canon to the contrary thereof notwithstanding.

16. And be it further enacted, That the father, if living, of any party under twenty-one years of age, such parties not being a widower or widow; or if the father shall be dead the guardian or guardians of the person of the party so under age, lawfully appointed, or one of them; and in case there shall be no such guardian or guardians, then the mother of such party, if unmarried; and if there shall be no mother unmarried, then the guardian or guardians of the person appointed by the Court of Chancery, if any, or one of them, shall have authority to give consent to the marriage of such party; and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorized to give such consent.

17. And be it further enacted, That in case the father or fathers of the parties to be married, or of one of them, so under age as aforesaid, shall be non compos mentis, or the guardian or guardians, mother or mothers, or any of them whose consent is made necessary as aforesaid to the marriage of such party or parties, shall be non compos mentis, or in

Oath to be taken before the surrogate as to certain particulars before licence is granted.

Bond not to be required before granting licence.

Who are to give consent if parties are under age.

If the father of minor be non compos mentis, or if guardians or mother of minor be

(a) In the Court for Divorce and Matrimonial Causes.

of the parties resided for 15 days before.

Where caveat entered no licence to issue till matter examined by Judge.

Parishes where no church or chapel, and extra-parochial places, deemed to belong to any adjoining parish, &c.

Where churches are demolished or under repair, banns to be proclaimed in a church or chapel of an adjoining parish, &c.

parish or chapelry within which the usual place of abode of one of the persons to be married shall have been for the space of fifteen days immediately before the granting of such licence.

11. And be it further enacted, That if any caveat be entered against the grant of any licence for a marriage, such caveat being duly signed by or on the behalf of the person who enters the same, together with his place of residence and the ground of objection on which his caveat is founded, no licence shall issue till the said caveat, or a true copy thereof, be transmitted to the judge out of whose office the licence is to issue, and until the judge has certified to the register that he has examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the licence for the said marriage, or until the caveat be withdrawn by the party who entered the same.

12. Provided always, and be it further enacted, That all parishes where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually solemnized every Sunday, and all extra-parochial places whatever, having no public chapel wherein banns may be lawfully published, shall be deemed and taken to belong to any parish or chapelry next adjoining, for the purposes of this Act only; and where banns shall be published in any church or chapel of any parish or chapelry adjoining to any such parish or chapelry where there shall be no church or chapel, or none wherein divine service shall be solemnized as aforesaid, or to any extra-parochial place as aforesaid, the parson, vicar, minister, or curate publishing such banns shall, in writing under his hand, certify the publication thereof, in the same manner as if either of the persons to be married had dwelt in such adjoining parish or chapelry.

13. Provided always, and be it further enacted and declared, That if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licenced by the bishop of the diocese for the performance of divine service, during the repair or rebuilding of the church as aforesaid; and where no such place shall be so licenced, then, during such period as aforesaid, the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed; and all marriages heretofore solemnized in other places within the said parishes or chapelries than the said churches or chapels on account of their being under repair, or taken down in order to be rebuilt, shall not be liable to have their validity questioned on

that account, nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever.

14. And be it further enacted, for avoiding all fraud and collusion in obtaining of licences for marriage, That before any such licence be granted one of the parties shall personally swear before the surrogate or other person having authority to grant the same, that he or she believeth that there is no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced in any ecclesiastical court (a), to bar or hinder the proceeding of the said matrimony according to the tenor of the said licence; and that one of the said parties hath, for the space of fifteen days immediately preceding such licence, had his or her usual place of abode within the parish or chapelry within which such marriage is to be solemnized; and where either of the parties, not being a widower or widow, shall be under the age of twenty-one years that the consent of the person or persons whose consent to such marriage is required under the provisions of this Act has been obtained thereto: Provided always, that if there shall be no such person or persons having authority to give such consent, then, upon oath made to that effect by the party requiring such licence, it shall be lawful to grant such licence notwithstanding the want of any such consent.

15. Provided always, and be it further enacted, That it shall not be required of any person applying for any such licence to give any caution or security, by bond or otherwise before such licence is granted, anything in any Act or Canon to the contrary thereof notwithstanding.

16. And be it further enacted, That the father, if living, of any party under twenty-one years of age, such parties not being a widower or widow; or if the father shall be dead the guardian or guardians of the person of the party so under age, lawfully appointed, or one of them; and in case there shall be no such guardian or guardians, then the mother of such party, if unmarried; and if there shall be no mother unmarried, then the guardian or guardians of the person appointed by the Court of Chancery, if any, or one of them, shall have authority to give consent to the marriage of such party; and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorized to give such consent.

17. And be it further enacted, That in case the father or fathers of the parties to be married, or of one of them, so under age as aforesaid, shall be non compos mentis, or the guardian or guardians, mother or mothers, or any of them whose consent is made necessary as aforesaid to the marriage of such party or parties, shall be non compos mentis, or in

Oath to be taken before the surrogate as to certain particulars before licence is granted.

Bond not to be required before granting licence.

Who are to give consent if parties are under age.

If the father of minor be non compos mentis, or if guardians or mother or minor be

(a) In the Court for Divorce and Matrimonial Causes.

non compos  
mentis, or  
beyond sea,  
Act. parties  
may apply  
to the Lord  
Chancellor.

parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent to a proper marriage, then it shall and may be lawful for any person desirous of marrying, in any of the before-mentioned cases, to apply by petition to the Lord Chancellor, Lord Keeper or the Lords Commissioners of the Great Seal of Great Britain for the time being, Master of the Rolls or Vice Chancellor of England, who is and are respectively hereby empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall upon examination appear to be proper, the said Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the time being, Master of the Rolls, or Vice Chancellor, shall judicially declare the same to be so; and such judicial declaration shall be deemed and taken to be as good and effectual to all intents and purposes as if the father, guardian or guardians, or mother of the person so petitioning had consented to such marriage.

Surrogate to  
take oath of  
office.

18. Provided always, and be it enacted, That from and after the said first day of November no surrogate hereafter to be deputed by any ecclesiastical judge who hath power to grant licences shall grant any such licence until he hath taken an oath before the said judge, or before a commissioner appointed by commission under the seal of the said judge, which commission the said judge is hereby authorized to issue, faithfully to execute his office according to law, to the best of his knowledge, and hath given security by his bond in the sum of one hundred pounds to the bishop of the diocese for the due and faithful execution of his said office.

If marriages  
by licence  
be not so-  
lemnized  
within three  
months, new  
licence to be  
obtained.

19. And be it also enacted, That whenever a marriage shall not be had within three months after the grant of a licence by any archbishop, bishop, or any ordinary or person having authority to grant such licence, no minister shall proceed to the solemnization of such marriage until a new licence shall have been obtained, unless by banns duly published according to the provisions of this Act.

Right of  
Archbishop  
of Canter-  
bury to  
grant spe-  
cial licences.

20. Provided always, and be it further enacted, That nothing herein-before contained shall be construed to extend to deprive the Archbishop of Canterbury and his successors, and his and their proper officers, of the right which hath hitherto been used in virtue of a certain statute made in the twenty-fifth year of the reign of the late king Henry the Eighth, intituled "An Act concerning Peter Pence and Dispensations," of granting special licences to marry at any convenient time or place.

Persons  
solemnizing  
marriage in  
any other  
place than a  
church or  
chapel, or

21. And be it further enacted, That if any person shall from and after the said first day of November solemnize matrimony in any other place than a church or such public chapel wherein banns may be lawfully published, or at any other time than between the hours of eight and twelve in the forenoon, unless by special licence from the Archbishop of

Canterbury, or shall solemnize matrimony without due publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same; or if any person, falsely pretending to be in holy orders, shall solemnize matrimony according to the rites of the Church of England; every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be transported for the space of fourteen years, according to the laws in force for transportation of felons; provided that all prosecutions for such felony shall be commenced within the space of three years after the offence committed.

22. Provided always, and be it further enacted, That if any persons shall knowingly and wilfully intermarry in any other place than a church or such public chapel wherein banns may be lawfully published, unless by special licence as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns (a), or licence from a person or persons having authority to grant the same, first had and obtained (b), or shall knowingly and wilfully consent to or acquiesce in the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever.

23. And be it further enacted, That if any valid marriage solemnized by licence shall, after the said first day of November next, be procured by a party to such marriage to be solemnized between persons, one or both of whom shall be under the age of twenty-one years, not being a widower or widow, contrary to the provisions of this Act, by means of such party falsely swearing as to any matter or matters to which such party is herein-before required personally to swear, such party wilfully and knowingly so swearing, or if any valid marriage by banns shall, after the said first day of November next, be procured by a party thereto to be solemnized by banns between persons, one or both of whom shall be under twenty-one years, not being a widower or widow, such party knowing that such person as aforesaid under the age of twenty-one years had a parent or guardian then living, and that such marriage was had without the consent of such parent or guardian, and knowing that banns had not been duly published according to the provisions of this Act, and having knowingly caused or procured the undue publication of banns,

without banns or licence, or under pretence of being in holy orders, shall be transported. Prosecution to be commenced within three years.

Marriage to be void where persons wilfully marry in any other place than a church, &c., or without banns or licence.

When marriage so solemnized between parties under age contrary to this Act, by false oath or fraud, the guilty party to forfeit all property accruing from the marriage.

(a) A marriage without any publication of banns would be held to be without due publication of banns under this section. See *Wright v. Blagood*, 1 Curteis, 662.

(b) The marriage of parties under a licence from a person not having authority to grant the same, is not void under this section unless both parties knowingly and wilfully intermarry by virtue of such licence. *Dormer v. Williams*, 1 Curteis, 570.

then and in every such case it shall be lawful for his Majesty's Attorney General (or for his Majesty's Solicitor General in case of the vacancy of the office of Attorney General) by information in the nature of an English bill in the Court of Chancery or Court of Exchequer, at the relation of a parent or guardian of the minor whose consent has not been given to such marriage, and who shall be responsible for any costs incurred in such suit, such parent or guardian previously making oath as is herein-after required, to sue for a forfeiture of all estate, right, title, and interest in any property which hath accrued or shall accrue to the party so offending by force of such marriage; and such court shall have power in such suit to declare such forfeiture, and thereupon to order and direct that all such estate, right, title, and interest in any property as shall then have accrued or shall thereafter accrue to such offending party, by force of such marriage, shall be secured under the direction of such court for the benefit of the innocent party, or of the issue of the marriage, or of any of them, in such manner as the said court shall think fit, for the purpose of preventing the offending party from deriving any interest in real or personal estate, or pecuniary benefits from such marriage; and if both the parties so contracting marriage shall, in the judgment of the court, be guilty of any such offence as aforesaid, it shall be lawful for the said court to settle and secure such property, or any part thereof, immediately for the benefit of the issue of the marriage, subject to such provisions for the offending parties, by way of maintenance or otherwise, as the said court, under the particular circumstances of the case, shall think reasonable, regard being had to the benefit of the issue of the marriage during the lives of their parents, and of the issue of the parties respectively by any future marriage, or of the parties themselves, in case either of them shall survive the other: provided also, that no such information as aforesaid shall be filed unless it shall be made out to the satisfaction of the Attorney or Solicitor General before he files the same, by oath or oaths sworn before one of the Masters in Ordinary in Chancery, or before one of the Barons of the Exchequer, and which they are hereby respectively empowered to administer, that the valid marriage to be complained of in such information hath been solemnized in such manner and under such circumstances as in the judgment of the said Attorney or Solicitor General are sufficient to authorize the filing the information under the provisions of this Act, and that such marriage has been solemnized without the consent of the party or parties at whose relation such information is proposed to be filed, or of any other parent or guardian of the minor married, to the knowledge or belief of the relator or relators so making oath; and that such relator or relators had not known or discovered that such marriage had been solemnized more than three

months previous to his or their application to the Attorney or Solicitor General (a).

24. And be it further enacted by the authority aforesaid, That all agreements, settlements, and deeds entered into or executed by the parties to any marriage, in consequence of or in relation to which marriage such information as aforesaid shall be filed, or by either of the said parties, before and in contemplation of such marriage, or after such marriage, for the benefit of the parties or either of them, or their issue, so far as the same shall be contrary to or inconsistent with the provisions of such security and settlement as shall be made by or under the direction of such court as aforesaid under the authority of this Act, shall be absolutely void, and have no force or effect.

Previous agreements to be void.

25. Provided always, and be it further enacted, That any original information to be filed for the purpose of obtaining a declaration of any such forfeiture as aforesaid shall be filed within one year after the solemnization of the marriage by which such forfeiture shall have been incurred, and shall be prosecuted with due diligence; and in case any person or necessary party to any such information shall abscond, or be or continue out of England, it shall be lawful for the court in which such information shall be filed to order such person to appear to such information, and answer the same within such time as to such court shall seem fit, and to cause such order to be served on such person at any place out of England, or to cause such order to be inserted in the *London Gazette*, and such other British or foreign newspapers as to such court shall seem proper, and in default of such person appearing and answering such information within the time to be limited as aforesaid, to order such information to be taken as confessed by such person, and to proceed to make such decree or order upon such information as such court might have made if such person had appeared to and answered such information: provided always, that in case the person at whose relation any such suit shall have been instituted shall die pending such suit, it shall be lawful for the Court of Chancery, if such court shall see fit, to appoint a proper person or proper persons at whose relation such suit may be continued.

Information to be filed within one year.

26. Provided always, and be it further enacted, That after the solemnization of any marriage under a publication of banns, it shall not be necessary in support of such marriage to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; or, where the marriage is by licence, it shall not be necessary to give any proof that the

Proof of the actual residence of the parties not necessary to the validity of a marriage, whether after banns or by licence.

(a) See 6 & 7 Will. 4, c. 85, s. 43, as to corresponding provisions with respect to marriages under that Act.



No suit shall be had to compel celebration of marriage by reason of any contract.

Marriages to be in the presence of two witnesses, and to be registered, and signed, &c.

This Act not to affect marriages of royal family.

Act not to extend to marriages of Quakers and Jews.

Two printed copies of the Act to be sent to the ministers of the several parishes, &c., of which one to be kept in the parish chest.

Act only to extend to England.

usual place of abode of one of the parties, for the space of fifteen days as aforesaid, was in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases be received to prove the contrary in any suit touching the validity of such marriage.

27. And be it further enacted, That in no case whatsoever shall any suit or proceedings be had in any Ecclesiastical Court in order to compel a celebration of any marriage *in facie ecclesie*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti* or *per verba de futuro*, any law or usage to the contrary notwithstanding.

28. And in order to preserve the evidence of marriages, and to make the proof thereof more certain and easy, and for the direction of ministers in the celebration of marriages and registering thereof, be it enacted, that from and after the said first day of November all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that immediately after the celebration of every marriage an entry thereof shall be made in the register book provided and kept for that purpose as by law is now directed, or shall be hereafter directed. [The provisions of the Act as to registering marriages are repealed after last day of June, 1837, by 6 & 7 Will. 4. c. 86, s. 1, and 7 Will. 4. c. 1, s. 1.]

29. [Persons convicted of making a false entry; or of forging, &c., any such entry; or of forging, &c., any licence; or of destroying such register, to be transported. Repealed after 20 July, 1830, by statute 11 Geo. 4. and 1 Will. 4. c. 66, s. 31(a).]

30. Provided always, and be it enacted, That this Act or anything therein contained shall not extend to the marriages of any of the royal family.

31. Provided likewise, and be it further enacted, That nothing in this Act contained shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively.

32. And be it further enacted, That two printed copies of this Act shall so soon as conveniently may be after the passing of this Act, be provided by his Majesty's printer, and transmitted to the officiating ministers of the several parishes and chapelries in England respectively; one of which copies shall be deposited and kept, with the book containing the marriage register of the parish or chapelry, in the chest or box provided for the custody of the same.

33. And be it further enacted, that this Act shall extend only to that part of the United Kingdom called England.

(a) The enactment now in force is the Consolidated Forgery Act, 24 & 25 Vict. c. 98, ss. 36, 37.

## MARRIAGES SOLEMNIZED ABROAD.

4 GEO. 4, c. 91.

*An Act to relieve his Majesty's subjects from all doubt concerning the validity of certain Marriages solemnized abroad.*

[18th July, 1823.]

WHEREAS it is expedient to relieve the minds of all his Majesty's subjects from any doubt concerning the validity of marriages solemnised by a minister of the Church of England in the chapel or house of any British ambassador or minister residing within the country to the court of which he is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing at such factory, as well as from any possibility of doubt concerning the validity of marriages solemnized within the British lines by any chaplain or officer, or any person officiating under the orders of the commanding officer of a British army serving abroad: Be it declared and enacted, and it is hereby declared and enacted by the king's most excellent Majesty by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all such marriages as aforesaid shall be deemed and held to be as valid in law as if the same had been solemnized within his Majesty's dominions, with a due observance of all forms required by law.

Marriages solemnized abroad by ministers of the Church of England, &c., declared valid as if solemnized in his Majesty's dominions.

2. Provided always, and be it further enacted, That nothing in this Act contained shall confirm or impair or anywise affect, or be construed to confirm or to impair or anywise to affect, the validity in law of any marriages solemnized beyond the seas, save and except such as have been or shall be (a) solemnized in the places, form, and manner herein specified and recited.

Not to affect the validity of marriages solemnized beyond seas.

## MARRIAGES WITHIN THE PROHIBITED DEGREES.

5 &amp; 6 WILL. 4, c. 54.

*An Act to render certain Marriages valid, and to alter the law with respect to certain voidable Marriages.*

[31st August, 1835.]

WHEREAS marriages between persons within the prohibited degrees are voidable only by sentence of the Ecclesiastical

(a) The words "shall be" are the words of futurity under this Act, under which marriages in the chapels of British missions abroad are now solemnized.

No suit shall be had to compel celebration of marriage by reason of any contract.

Marriages to be in the presence of two witnesses, and to be registered, and signed, &c.

This Act not to affect marriages of royal family. Act not to extend to marriages of Quakers and Jews.

Two printed copies of the Act to be sent to the ministers of the several parishes, &c., of which one to be kept in the parish chest. Act only to extend to England.

usual place of abode of one of the parties, for the space of fifteen days as aforesaid, in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases be received to prove the contrary in any suit touching the validity of such marriage.

27. And be it further enacted, That in no case whatsoever shall any suit or proceedings be had in any Ecclesiastical Court in order to compel a celebration of any marriage *in facie ecclesie*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti* or *per verba de futuro*, any law or usage to the contrary notwithstanding.

28. And in order to preserve the evidence of marriages, and to make the proof thereof more certain and easy, and for the direction of ministers in the celebration of marriages and registering thereof, be it enacted, that from and after the said first day of November all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that immediately after the celebration of every marriage an entry thereof shall be made in the register book provided and kept for that purpose as by law is now directed, or shall be hereafter directed. [The provisions of the Act as to registering marriages are repealed after last day of June, 1837, by 6 & 7 Will. 4, c. 86, s. 1, and 7 Will. 4, c. 1, s. 1.]

29. [Persons convicted of making a false entry; or of forging, &c., any such entry; or of forging, &c., any licence; or of destroying such register, to be transported. Repealed after 20 July, 1830, by statute 11 Geo. 4. and 1 Will. 4, c. 66, s. 31(a).]

30. Provided always, and be it enacted, That this Act or anything therein contained shall not extend to the marriages of any of the royal family.

31. Provided likewise, and be it further enacted, That nothing in this Act contained shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively.

32. And be it further enacted, That two printed copies of this Act shall so soon as conveniently may be after the passing of this Act, be provided by his Majesty's printer, and transmitted to the officiating ministers of the several parishes and chapelries in England respectively; one of which copies shall be deposited and kept, with the book containing the marriage register of the parish or chapelry, in the chest or box provided for the custody of the same.

33. And be it further enacted, that this Act shall extend only to that part of the United Kingdom called England.

(a) The enactment now in force is the Consolidated Forgery Act, 24 & 25 Vict. c. 93, ss. 36, 37.

## MARRIAGES SOLEMNIZED ABROAD.

4 GEO. 4, c. 91.

*An Act to relieve his Majesty's subjects from all doubt concerning the validity of certain Marriages solemnized abroad.*

[18th July, 1823.]

WHEREAS it is expedient to relieve the minds of all his Majesty's subjects from any doubt concerning the validity of marriages solemnised by a minister of the Church of England in the chapel or house of any British ambassador or minister residing within the country to the court of which he is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing at such factory, as well as from any possibility of doubt concerning the validity of marriages solemnized within the British lines by any chaplain or officer, or any person officiating under the orders of the commanding officer of a British army serving abroad: Be it declared and enacted, and it is hereby declared and enacted by the king's most excellent Majesty by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all such marriages as aforesaid shall be deemed and held to be as valid in law as if the same had been solemnized within his Majesty's dominions, with a due observance of all forms required by law.

2. Provided always, and be it further enacted, That nothing in this Act contained shall confirm or impair or anywise affect, or be construed to confirm or to impair or anywise to affect, the validity in law of any marriages solemnized beyond the seas, save and except such as have been or shall be (a) solemnized in the places, form, and manner herein specified and recited.

Marriages solemnized abroad by ministers of the Church of England, &c., declared valid as if solemnized in his Majesty's dominions.

Not to affect the validity of marriages solemnized beyond seas.

## MARRIAGES WITHIN THE PROHIBITED DEGREES.

5 &amp; 6 WILL. 4, c. 54.

*An Act to render certain Marriages valid, and to alter the law with respect to certain voidable Marriages.*

[31st August, 1835.]

WHEREAS marriages between persons within the prohibited degrees are voidable only by sentence of the Ecclesiastical

(a) The words "shall be" are the words of futurity under this Act, under which marriages in the chapels of British missions abroad are now solemnized.

which each has dwelt therein. and the church or other building in which the marriage is to be solemnized; provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards (a).

Superintendent registrar to keep notices in a book.

5. And be it enacted, That the superintendent registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices fairly into a book to be for that purpose furnished to him by the Registrar General, to be called "The Marriage Notice Book," *the cost of providing which shall be defrayed in like manner as the cost of providing registrar books of births and deaths (b)*, and the Marriage Notice Book shall be open at all reasonable times without fee to all persons desirous of inspecting the same; and for every such entry the superintendent registrar shall be entitled to have a fee of one shilling.

6. [Notices to be read at meetings of guardians (c).]

7. [After seven days, or twenty-one days, certificate of notice to be given upon demand (d).]

Forms of certificates to be furnished.

Certificates for marriage by licence to be distinguishable from other certificates.

8. And be it enacted, that the Registrar General shall furnish to every superintendent registrar a sufficient number of forms of certificates, *the cost of which shall be accounted for by the superintendent registrar to the Registrar General (e)*; and in order to distinguish the certificates to be issued for marriages by licence from the certificates to be issued for marriages without licence, a watermark in the form of the word "licence," in Roman letters, shall be laid and manufactured in the substance of the paper on which the certificates to be issued for marriage by licence shall be written or printed; and every certificate to be issued for marriage by licence shall be printed with red ink, and every certificate to be issued for marriages without licence shall be printed with black ink, and such other distinctive marks between the two kinds of certificate shall be used from time to time as shall seem fit to the Registrar General.

Issue of superintendent registrar's certificate may be forbidden.

9. And be it enacted, that any person authorized in that behalf may forbid the issue of the superintendent registrar's certificate, by writing at any time before the issue of such certificate the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place

(a) See further provisions as to notice of marriage, 19 & 20 Vict. c. 119, ss. 2, 3.

(b) Repealed by 21 & 22 Vict. c. 25, s. 6.

(c) Repealed by 19 & 20 Vict. c. 119, s. 1.

(d) See fresh provisions in sect. 9 of 19 & 20 Vict. c. 119.

(e) See 21 & 22 Vict. c. 25, s. 6, which repeals this provision as to the cost of forms being accounted for.

any law or canon in force before the passing of this Act it is provided that any marriage may be solemnized after publication of banns, such marriage may be solemnized in like manner on production of the [superintendent (b)] registrar's certificate as hereinafter provided; provided also, that nothing in this Act contained shall affect the right of the Archbishop of Canterbury and his successors, and his and their proper officers, to grant special licences to marry at any convenient time and place, or the right of any surrogate or other person now having authority to grant licences for marriages.

solemnized  
on production  
of registrar's  
certificate.

2. And be it enacted, That the Society of Friends commonly called Quakers, and also persons professing the Jewish religion, may continue to contract and solemnize marriage according to the usages of the said society and of the said persons respectively; and every such marriage is hereby declared and confirmed good in law, provided that the parties to such marriage be *both of the said society (c)*, or both persons professing the Jewish religion respectively; provided also, that notice to the [superintendent] registrar shall have been given, and the superintendent registrar's certificate shall have been issued in manner hereinafter provided (d).

Marriages  
of Quakers  
and Jews.

3. And be it enacted, That the superintendent registrar of births and deaths of every union, parish or place shall be, in right of his office, superintendent registrar of marriages within such union, parish, or place, and that such union, parish, or place shall be deemed the district of such superintendent registrar of marriages.

Superintendent  
registrar of  
births to be  
superintendent  
registrar of  
marriages.

4. And be it enacted, That in every case of marriage intended to be solemnized in England after the said *first day of March* according to the rites of the Church of England (unless by licence or by special licence, or after publication of banns,) and in every case of marriage intended to be solemnized in England after the said *first day of March* according to the usages of the Quakers or Jews, or according to any form authorized by this Act, one of the parties shall give notice under his or her hand, *in the form of Schedule (A) to this Act annexed, or to the like effect*, to the superintendent registrar of the district within which the parties shall have dwelt for not less than seven days then next preceding, or if the parties dwell in the districts of different superintendent registrars shall give the like notice to the superintendent registrar of each district, and shall state therein the name and surname and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time not being less than seven days during

Notice of  
every intended  
marriage to  
be given to  
the superintendent  
registrar of  
the district.

(b) This must be construed to mean the Superintendent Registrar; 7 Will. 4 & 1 Vict. c. 22, s. 1.

(c) See *ante*, p. 204.

(d) The marriages of Quakers and Jews may be solemnized by licence; 19 & 20 Vict. c. 119, s. 21.

which each has dwelt therein, and the church or other building in which the marriage is to be solemnized; provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards (a).

Superintendent registrar to keep notices in a book.

5. And be it enacted, That the superintendent registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices fairly into a book to be for that purpose furnished to him by the Registrar General, to be called "The Marriage Notice Book," *the cost of providing which shall be defrayed in like manner as the cost of providing registrar books of births and deaths (b)*, and the Marriage Notice Book shall be open at all reasonable times without fee to all persons desirous of inspecting the same; and for every such entry the superintendent registrar shall be entitled to have a fee of one shilling.

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Issue of superintendent registrar's certificate may be forbidden.

9. And be it enacted, that any person authorized in that behalf may forbid the issue of the superintendent registrar's certificate, by writing at any time before the issue of such certificate the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place

(a) See further provisions as to notice of marriage, 19 & 20 Vict. c. 119, ss. 2, 3.

(b) Repealed by 21 & 22 Vict. c. 25, s. 6.

(c) Repealed by 19 & 20 Vict. c. 119, s. 1.

(d) See fresh provisions in sect. 9 of 19 & 20 Vict. c. 119.

(e) See 21 & 22 Vict. c. 25, s. 6, which repeals this provision as to the cost of forms being accounted for.

of abode, and his or her character, in respect of either of the parties, by reason of which he or she is so authorized; and in case the issue of any such certificate shall have been so forbidden the notice and all proceedings thereupon shall be utterly void.

10. And be it enacted, That after the said *first day of March* the like consent shall be required to any marriage in England solemnized by licence as would have been required by law to marriages solemnized by licence immediately before the passing of this Act; and every person whose consent to a marriage by licence is required by law is hereby authorized to forbid the issue of the superintendent registrar's certificate whether the marriage is intended to be by licence or without licence. Consent.

11. And be it enacted, That after the said *first day of March* every superintendent registrar shall have authority to grant licences for marriage in any building registered as hereinafter provided within any district within his superintendence, or in his office *in the form of Schedule (C.) to this Act annexed, and for every such licence shall be entitled to have of the party requiring the same the sum of 3l. above the value of the stamps necessary on granting such licence (f);* and every superintendent registrar shall four times in every year, on such days as shall be appointed by the Registrar General, make a return to the Registrar General of every licence granted by him since his last return, and of the particulars stated concerning the parties: provided always, that no superintendent registrar shall grant any such licence until he shall have given security by his bond in the sum of 100l. to the Registrar General for the due and faithful execution of his office: provided also, that nothing herein contained shall authorize any superintendent registrar to grant any licence for marriage in any church or chapel in which marriages may be solemnized according to the rites of the Church of England, or in any church or chapel belonging to the Church of England or licensed for the celebration of divine worship according to the rites and ceremonies of the Church of England, *or any licence for marriage in any registered building which shall not be within his district (g).* Superintendent registrar may grant licences for marriages.

Superintendent registrar to give security. Proviso.

12. [Certificate to be given before the licence is granted (f)].

13. And be it enacted, That any person, on payment of 5s., may enter a caveat with the superintendent registrar against the grant of a certificate or a licence for the marriage of any person named therein; and if any caveat be entered with the superintendent registrar, such caveat being duly signed Caveat may be lodged with superintendent registrar against grant of licence or certificate.

(f) See provisions as to granting licences; 19 & 20 Vict. c. 119, ss. 9, 10; the fee is reduced to 1l. 10s., exclusive of stamps.

(g) *Ib.* ss. 13, 14, by which the superintendent registrar is empowered to grant licences for marriage out of his district.



by or on behalf the person who enters the same, together with his or her place of residence, and the ground of objection on which his or her caveat is founded, no certificate or licence shall issue or be granted until the superintendent registrar shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the certificate or licence for the said marriage, or until the caveat be withdrawn by the party who entered the same; provided that in cases of doubt it shall be lawful for the superintendent registrar to refer the matter of any such caveat to the Registrar General, who shall decide upon the same: provided likewise, that in case of the superintendent registrar refusing the grant of the certificate or licence, the person applying for the same shall have a right to appeal to the Registrar General, who shall thereupon either confirm the refusal or direct the grant of the certificate or licence.

Marriages not to be solemnized until after 21 days after entry of notice, unless by licence.

14. And be it enacted, That after the said *first day of March* no marriage after such notice as aforesaid, unless by virtue of a licence to be granted by the superintendent registrar, shall be solemnized or registered in England until after the expiration of twenty-one days after the day of the entry of such notice as aforesaid; and no marriage shall be solemnized by the licence of any superintendent registrar or registered until after the expiration of *seven days (a)* after the day of the entry of such notice as aforesaid.

New notice required after three months.

15. And be it enacted, That whenever a marriage shall not be had within three calendar months after the notice shall have been so entered by the superintendent registrar, the notice and certificate, and any licence which may have been granted thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any registrar register the same, until new notice shall have been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Superintendent registrar's certificate or licence to be delivered to the person by or before whom the marriage is solemnized.

16. And be it enacted, That the superintendent's certificate, or, in case the parties shall have given notice to the superintendent of different districts, the certificate of each superintendent, shall be delivered to the officiating minister, if the marriage shall be solemnized according to the rites of the Church of England; and the said certificate or licence shall be delivered to the registering officer of the people called Quakers for the place where the marriage is solemnized, if the same be solemnized according to the usages of the said people; or to the officer of a synagogue by whom the marriage is registered, if the same shall be solemnized

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(a) "One whole day;" 19 & 20 Vict. c. 119, s. 9.

according to the usages of persons professing the Jewish religion; and in all other cases shall be delivered to the registrar present at the marriage, as hereinafter provided.

17. And be it enacted, That it shall be lawful for the superintendent registrar of any union, parish, or place, *subject to the approval of the Board of Guardians thereof (b)*, to appoint by writing under his hand such person or persons as he may think fit, with such qualifications as the Registrar General, by any general rule, may declare to be necessary, to be a registrar or registrars for the purpose of being present at marriages to be solemnized by virtue of this Act at which the presence of a registrar is made necessary, and every such registrar of marriages shall hold his office during the pleasure of the superintendent registrar by whom he was appointed, or of the Registrar General.

Superintendent registrar may appoint registrars of marriages.

18. And be it enacted, That any proprietor or trustee of a separate building (c), certified according to law as a place of religious worship (d), may apply to the superintendent registrar of the district, in order that such building may be registered for solemnizing marriages therein, and in such case shall deliver to the superintendent registrar a certificate signed in duplicate by twenty householders at the least, that such building has been used by them during one year at least as their usual place of public religious worship, and that they are desirous that such place should be registered as aforesaid, each of which certificates shall be countersigned by the proprietor or trustee by whom the same shall be delivered; and the superintendent registrar shall send both certificates to the Registrar General, who shall register such building accordingly in a book to be kept for that purpose at the general register office; and the Registrar General shall indorse on both certificates the date of the registry, and shall keep one certificate with the other records of the general register office, and shall return the other certificate to the superintendent registrar, who shall keep the same with the other records of his office; and the superintendent registrar shall enter the date of the registry of such building in a book to be furnished to him for that purpose by the Registrar General, and shall give a certificate of such registry under his hand, on parchment or vellum, to the proprietor or trustee by whom the certificates are countersigned, and shall give public notice of the registry thereof by advertisement in some newspaper circulating within the county, and in the *London Gazette*; and for every such entry, certificate, and

Places of worship may be registered for solemnizing marriages therein.

(b) These appointments are subject to the approval of the Registrar General; 19 & 20 Vict. c. 119, s. 15.

(c) As to Roman Catholic chapels not being separate buildings, see 7 Will. 4 & 1 Vict. c. 22, s. 35.

(d) See 19 & 20 Vict. c. 119, s. 17, as to proof on this point not being necessary to the validity of marriages.

(b) removal of the same congregation the new place of worship may be immediately registered, instead of the one disused.

publication. the superintendent registrar shall receive at the time of the delivery to him of the certificates the sum of 3*l*.

19. And be it enacted, That if at any time subsequent to the registry of any building for solemnizing marriages therein it shall be made to appear to the satisfaction of the Registrar General that such building has been disused for public religious worship of the congregation on whose behalf it was registered as aforesaid, the Registrar General shall cause the registry thereof to be cancelled; provided that if it shall be proved to the satisfaction of the Registrar General that the same congregation use instead thereof some other such building for the purpose of public religious worship, the Registrar General may substitute and register such new place of worship instead of the disused building, although such new place of worship may not have been used for that purpose during one year then next preceding; and every application for cancelling the registry of any such building, or for such substitution and registry of a substituted building, shall be made to the Registrar General by or through the superintendent registrar of the district; and such cancel or substitution, when made, shall be made known by the Registrar General to the superintendent registrar, who shall enter the fact and the date thereof in the book provided for the registry of such buildings, and shall certify and publish such cancel or substitution and registry in manner hereinbefore provided in the case of the original registry of the disused building; and for every such substitution the superintendent registrar shall receive, at the time of the delivery of the certificate from the party requiring the substitution, the sum of 3*l*.; and after such cancel or substitution shall have been made by the Registrar General it shall not be lawful to solemnize any marriage in such disused building unless the same shall be again registered in the manner hereinbefore provided.

Marriages may be solemnized in such registered places, in the presence of some registrar, and of two witnesses.

20. And be it enacted, That after the expiration of the said period of twenty-one days, or *seven days* (a) if the marriage is by licence, marriages may be solemnized in the registered building stated aforesaid in the notice of such marriage, between and by the parties described in the notice and certificate, according to such form and ceremony as they may see fit to adopt (b): provided nevertheless, that every such marriage shall be solemnized with open doors, between the hours of eight and twelve in the forenoon, in the presence of some registrar of the district in which such registered building is situate, and of two or more credible witnesses; provided also, that in some part of the ceremony, and in

(a) "One whole day;" 19 & 20 Vict. c. 119, s. 9.

(b) The consent of the minister, or of one of the trustees, &c. is necessary in order that marriages may be solemnized in registered buildings; see 19 & 20 Vict. c. 119, s. 11.

the presence of such registrar and witnesses, each of the parties shall declare,

"I do solemnly declare, that I know not of any lawful impediment, why I A. B. may not be joined in matrimony to C. D."

And each of the parties shall say to the other,

"I call upon these persons here present to witness that I A. B. do take thee C. D. to be my lawful wedded wife [or husband] (a)."

Provided also, that there be no lawful impediment to the marriage of such parties.

21. And be it enacted, That any persons who shall object to marry under the provisions of this Act in any such registered building may, after due notice and certificate issued as aforesaid, contract and solemnize marriage at the office and in the presence of the superintendent registrar and some registrar of the district, and in the presence of two witnesses, with open doors, and between the hours aforesaid, making the declaration and using the form of words hereinbefore provided in the case of marriage in any such registered building.

22. And be it enacted, That the registrar shall be entitled for every marriage which shall be solemnized under this Act in his presence to have from the parties married the sum of 10s., if the marriage shall be by licence, and otherwise the sum of 5s.

23. And be it enacted, That the registrar shall forthwith register every marriage solemnized in manner aforesaid in his presence in a marriage register book to be furnished to him for that purpose from time to time by the Registrar General, according to the form provided for the registration of marriages by an Act made in this present session of Parliament, intituled "An Act for Registering Births, Deaths, and Marriages in England," the cost of which shall be defrayed in like manner as the cost of providing register books of births and deaths; and every entry of such marriage shall be signed by the person by or before whom the marriage shall have been solemnized. if there shall be any such person, and by the registrar, and also by the parties married, and attested by two witnesses; and every such entry shall be made in order from the beginning to the end of the book.

24. And be it enacted, That in every year, on such days as shall from time to time be appointed by the Registrar General within one calendar month next after the first day of April, the first day of July, the first day of October, and the first day of January respectively, every registrar shall make and deliver to the superintendent registrar of his district a true copy, certified by him under his hand, according to the form of Schedule D. to this Act annexed, of all the entries of mar-

Marriages may be celebrated before the superintendent registrar.

Marriage fees to the registrar.

Registrar to register all marriages solemnized before him in books to be sent by the Registrar General.

6 & 7 Will. 4, c. 86.

Copies of the marriage register book to be given quarterly to the superintendent registrar,

(a) See provision as to the use of the Welsh tongue in marriages, in Wales, 7 Will. 4 & 1 Vict. c. 22, s. 23.

riage in the register book kept by him since the last delivery, and the superintendent registrar shall verify the same, and if found to be correct shall certify the same under his hand to be a true copy; and if there shall have been no marriage registered since the delivery of the last certified copy, the registrar shall certify the fact, and such certificate shall be delivered to the superintendent registrar as aforesaid, and countersigned by him; and the registrar shall keep safely the said register book until it shall be filled, and shall then deliver it to the superintendent registrar to be kept by him with the records of his office.

Proof of residence of parties or consent, not necessary to establish the marriage.

25. And be it enacted, That after any marriage shall have been solemnized it shall not be necessary in support of such marriage to give any proof of the actual dwelling of either of the parties previous to the marriage within the district wherein such marriage was solemnized for the time required by this Act, or of the consent of any person whose consent thereunto is required by law; nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage (a).

Bishops, with consent of patrons, may license chapels for the solemnization of marriages in populous places.

26. And whereas it is expedient that provision should be made, under proper restrictions, for relieving the inhabitants of populous districts remote from the parish church, or from any chapel wherein marriages may be lawfully celebrated according to the rites and ceremonies of the Church of England, from the inconvenience to which they may be thereby subjected in the solemnization of their marriages: Be it therefore enacted, that, with the consent under the hand and seal of the patron and incumbent respectively of the church of the parish or district in which may be situated any public chapel with or without a chapelry thereunto annexed, or any chapel duly licensed for the celebration of divine service according to the rites and ceremonies of the Church of England, or any chapel the minister whereof is duly licensed to officiate therein according to the rites and ceremonies of the Church of England, or without such consent after two calendar months' notice in writing given by the registrar of the diocese to such patron and incumbent respectively, the bishop of the diocese may, if he shall think it necessary for the due accommodation and convenience of the inhabitants, authorize by a licence under his hand and seal the solemnization of marriages in any such chapel for persons residing within a district the limits whereof shall be specified in the bishop's licence, and under such provisions as to the amount, appropriation, or apportionment of the dues, and as to other particulars, as to the said bishop may seem fit, and as may be specified in the said licence; provided that it shall be lawful for any patron or incumbent who shall refuse or

(a) See the declaratory clause in 19 & 20 Vict. c. 119, s. 17.

withhold consent to the grant of any such licence to deliver to the bishop, under his or her hand and seal, a statement of the reasons for which such consent shall have been so refused or withholden; and no such licence shall be granted by any bishop until he shall have inquired into the matter of such reasons; and every instrument of consent of the patron or incumbent, or, if such consent be refused or withholden, a copy of the notice under the hand of the registrar, and every statement of reasons alleged as aforesaid by the patron or incumbent, with the bishop's adjudication thereupon under his hand and seal, shall be registered in the registry of the diocese; and thenceforth and until the said licence be revoked marriages solemnized in such chapel shall be as valid to all intents and purposes as if the same had been solemnized in the parish church, or in any chapel where marriages might heretofore have been legally solemnized.

27. And be it enacted, That all fees, dues, and other emoluments on account of the solemnization of marriages which belong to the incumbent or clerk respectively of any church or chapel in any parish or district within which the solemnization of marriages shall be authorized as aforesaid, shall respectively be received, until the avoidance of such church or chapel next after the passing of this Act, for and on account of such incumbent, and, until the vacancy in the office of clerk next after the passing of this Act, for and on account of such clerk, and be paid over to them, except such portion of the fees, dues, or other emoluments as the said bishop of the diocese, with the consent of the said incumbent and clerk respectively, shall in such aforesaid licence assign to the minister and clerk respectively of the chapel in which the solemnization of marriages shall be authorized as aforesaid; and that it shall be lawful for the said bishop in and by such licence, without any such consent, to declare that from and after such next avoidance or vacancy respectively the whole or such part of the fees, dues, and other emoluments on account of the solemnization of marriages in such last-mentioned chapel as shall be specified in such licence shall be receivable, and the same shall thenceforth be received by or for the minister and clerk of such chapel respectively.

28. And be it enacted, That when the said bishop shall authorize the solemnization of marriages, in any such chapel as aforesaid, without the consent under the hand and seal of the patron and incumbent respectively, it shall be lawful for them or either of them to appeal within one calendar month to the archbishop of the province, who shall hear the same in a summary manner, and shall make such order confirming, revoking, or varying the licence so given as to him shall seem meet and expedient, which order shall be registered in the registry of the diocese, and shall be conclusive and binding on all parties whatsoever.

Appropriation of fees on marriages performed in such chapels.

Patron or incumbent may appeal to the archbishop against such licences.

Notice of such licences to be affixed in chapels.

Marriages performed in such chapels to be under the same regulations as those performed in parish churches.

Option to parties to be married at parish church.

Bishop, with consent of archbishop, may revoke such licences;

in which case registers to be sent to the incumbent of the parish church.

29. And be it enacted, That there shall be placed in some conspicuous part in the interior of every chapel in respect of which such licence shall be given as aforesaid a notice in the words following: "*Marriages may be solemnized in this chapel*" (a).

30. And be it enacted, That all provisions which shall from time to time be in force relative to marriages, and to providing, keeping, and transmitting register books and copies of registers of marriages solemnized in any parish church, shall extend to any chapel in which the solemnization of marriages shall be authorized as aforesaid, in the same manner as if the same were a parish church, and everything required by law to be done relating thereto by the rector, vicar, curate, or churchwardens respectively of any parish church shall be done by the officiating minister, chapelwarden, or other person exercising analogous duties in such chapel respectively.

31. Provided always, and be it enacted, That notwithstanding any such licence as aforesaid to solemnize marriages in any such chapel, the parties may, if they think fit, have their marriage solemnized in the parish church, or in any chapel in which heretofore the marriage of such parties or either of them might have been legally solemnized.

32. And be it enacted, That any such licence or order may at any time be revoked by writing under the hand and seal of the bishop of the diocese, with the consent in writing of the archbishop of the province; and such revocation and consent shall be registered in the registry of the diocese, the registrar whereof shall notify the same in writing to the minister officiating in the chapel, and shall also give public notice thereof by advertisement in some newspaper circulating within the county and in the *London Gazette*, and thenceforth the authority to solemnize marriages in such chapel shall cease and determine.

33. And be it enacted, That in case of the revocation of the licence to solemnize marriages in any such chapel all registers of marriages solemnized therein under such licence which shall be in the custody or possession of the minister of such chapel at the time of such revocation shall forthwith be transmitted to the incumbent or officiating minister of the parish church, and shall thenceforth be preserved, and in all other respects dealt with in the same manner, and be of the same force and validity, to all intents and purposes, as if they had been originally made and deposited with such incumbent or officiating minister; and that such incumbent or minister shall, when he next transmits to the superintendent registrar copies of the registers of marriages solemnized in such parish church, also therewith transmit copies of all such entries as

(a) By 7 Will. 4 & 1 Vict. c. 22, the notice required is—"Banns may be published and marriages may be solemnized in this chapel."

shall have been made in such first-mentioned registers subsequent to the date of the last entry a copy whereof was transmitted to the superintendent registrar, and shall also transmit to him one copy of every register book so transmitted to him of which no copy shall have been already transmitted to the superintendent registrar, having first signed his name at the foot of the last entry therein.

34. And be it enacted, That the registrar of every diocese shall within fifteen days after the said *first day of March*, and also within fifteen days after the first day of January in every succeeding year, make out and send through the post office, directed to the Registrar General of births, deaths, and marriages, at his office, a list of all chapels belonging to the Church of England within that diocese wherein marriages may lawfully be solemnized according to the rites and ceremonies of the Church of England, and shall distinguish in such list which have a parish, chapelry, or other recognized ecclesiastical division annexed to them, and which are chapels licensed by the bishop under this Act, and shall state therein the district for which each of such chapels is licensed according to the description thereof in the licence; and the Registrar General shall in every year make out and cause to be printed a list of all such chapels, and also of all places of public worship registered under the provisions of this Act, and shall state in such list the county and registrar's district within which each chapel or registered building is situated, and shall add also the names and places of abode of the registrars and deputy registrars of each district, and of the superintendent registrars; and a copy of such list shall be sent to every registrar and superintendent registrar.

35. And be it enacted, That every marriage solemnized under this Act shall be good and cognizable in like manner as marriages before the passing of this Act, according to the rites of the Church of England.

36. And be it enacted, That it shall be lawful for the registrar before whom any marriage is solemnized according to the provisions of this Act to ask of the parties to be married the several particulars required to be registered touching such marriage.

37. And be it enacted, That every person who shall enter a caveat with the superintendent registrar against the grant of any licence or issue of any certificate on grounds which the Registrar General shall declare to be frivolous, and that they ought not to obstruct the grant of the licence, shall be liable for the costs of the proceedings, and for damages to be recovered in a special action upon the case by the party against whose marriage such caveat shall have been entered.

38. And be it enacted, That every person who shall knowingly and wilfully make any false declaration or sign any false notice or certificate required by this Act, for the purpose of

Registrars of dioceses to send to the registrar office, yearly, lists of licensed chapels within their districts.

List of all chapels and buildings registered to be printed.

Marriages under this Act cognizable.

Registrar may ask certain particulars of parties.

Persons vexatiously entering caveat liable to costs and damages.

Persons making false declaration,



Ac., guilty  
of perjury.

procuring any marriage, and every person who shall forbid the issue of any superintendent registrar's certificate, by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalties of perjury (a).

Persons  
wilfully  
solemnizing  
marriages  
guilty of  
felony.

39. And be it enacted, That every person who after the said *first day of March* shall knowingly and wilfully solemnize any marriage in England, except by special licence, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the Church of England, or than the registered building or office specified in the notice and certificate as aforesaid, shall be guilty of felony (except in the case of a marriage between two of the Society of Friends commonly called Quakers, according to the usages of the said Society, or between two persons professing the Jewish religion, according to the usages of the Jews); and every person who in any such registered building or office shall knowingly and wilfully solemnize any marriage in the absence of a registrar of the district in which such registered building or office is situated shall be guilty of felony; and every person who shall knowingly and wilfully solemnize any marriage in England after the said *first day of March* (except by licence) within twenty-one days after the entry of the notice to the superintendent registrar as aforesaid, or if the marriage is by licence *within seven days* (b) after such entry, or after three calendar months after such entry, shall be guilty of felony.

Superin-  
tendent  
registrars  
wilfully  
issuing  
certificates  
guilty of  
felony.

40. And be it enacted, That every superintendent registrar who shall knowingly and wilfully issue any certificate for marriage after the expiration of three calendar months after the notice shall have been entered by him as aforesaid, or any certificate for marriage by licence before the expiration of *seven days* (b) after the entry of the notice, or any certificate for marriage without licence before the expiration of twenty-one days after the entry of the notice, or any certificate the issue of which shall have been forbidden as aforesaid by any person authorized to forbid the issue of the [superintendent] registrar's certificate, or who shall knowingly and wilfully register any marriage herein declared to be null and void, and every [superintendent] registrar who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the notice shall have been entered by the registrar as aforesaid, or who shall knowingly and wilfully solemnize in his office any marriage herein declared to be null and void, shall be guilty of felony.

Limitation

41. And be it enacted, That every prosecution under this

(a) See 19 & 20 Vict. c. 119, s. 1.

(b) "One whole day."

Act shall be commenced within the space of three years after the offence committed.

42. And be it enacted, That if any persons shall knowingly and wilfully intermarry after the said *first day of March* under the provisions of this Act in any place other than the church, chapel, registered building, or office or other place specified in the notice and certificate as aforesaid, or without due notice to the superintendent registrar, or without certificate of notice duly issued, or without licence, in case a licence is necessary under this Act, or in the absence of a registrar or superintendent registrar where the presence of a registrar or superintendent registrar is necessary under this Act, the marriage of such persons, except in any case hereinafter excepted, shall be null and void: Provided always, that nothing herein contained shall extend to annul any marriage legally solemnized according to the provisions of an Act passed in the fourth year of his late Majesty George the Fourth, intituled "An Act for amending the Laws respecting the Solemnization of Marriages in England."

43. And be it enacted, That if any valid marriage shall be had under the provisions of this Act by means of any wilfully false notice, certificate, or declaration made by either party to such marriage, as to any matter to which a notice, certificate, or declaration is herein required, it shall be lawful for his Majesty's Attorney-General or Solicitor-General to sue for a forfeiture of all estate and interest in any property accruing to the offending party by such marriage; and the proceedings thereupon and consequences thereof shall be the same as are provided in the like case with regard to marriages solemnized by licence before the passing of this Act according to the rites of the Church of England (c).

44. And be it enacted, That this Act shall be taken to be part of the said Act for registering births, deaths, and marriages, as fully and effectually as if incorporated therewith, and that all the provisions and penalties of the said Act relating to any registrar or register of marriages, or certified copies thereof, shall be taken to extend to the registrars and registers of marriages to be solemnized under this Act, and to the certified copies thereof, so far as the same are applicable thereunto.

45. And be it enacted, That this Act shall extend only to England, and shall not extend to the marriage of any of the Royal Family.

of prosecution.

Marriages void if unduly solemnized with the knowledge of both parties.

4 G. 4, c. 76.

In cases of fraudulent marriage, the guilty party to forfeit all property accruing from the marriage, as in 4 G. 4, c. 76.

Provisions of Registry Act extended to this Act.

Extent of Act.

(c) The 19 & 20 Vict. c. 119, s. 19, contains a similar provision.

## Schedules to which this Act refers.

## SCHEDULE (A).

*Notice of Marriage (a).*

## SCHEDULE (B) (a).

*Registrar's Certificate.*

## SCHEDULE (C).

*Licence of Marriage (a).*

## SCHEDULE (D).

I, *John Cox*, Registrar of the district of *Stepney*, in the county of *Middlesex*, do hereby certify, That this is a true copy of the entries of marriage registered in the said district from the entry of the marriage of *John Wood* and *Ann Simpson*, number *one*, to the entry of the marriage of *James Smith* and *Martha Green*, number *fourteen*. Witness my hand this *first* day of *July*, 1837.

(Signed)

*John Cox*,  
Registrar.

[The *italics* in this schedule to be filled up as the case may be.]

## REGISTRATION ACT, 1836.

6 &amp; 7 WILL. 4, c. 86.

*An Act for registering Births, Deaths, and Marriages in England.* [17th August, 1836.]

WHEREAS it is expedient to provide the means for a complete register of the births, deaths, and marriages of his Majesty's subjects in England: and whereas an Act passed in the fifty-second year of the reign of his late Majesty King George the Third, intituled "An Act for the better regulating Parish and other Registers of Births, Baptisms, Marriages, and Burials in England;" and also an Act passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled

<sup>2</sup> G. 3, c.  
46.

(a) These schedules are superseded by Schedules (A), (B), and (C), annexed to stat. 19 & 20 Vict. c. 119, *post*.

"An Act for amending the Laws respecting the Solemnization of Marriages in England," are insufficient for the purpose aforesaid: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that after the *first day of March* (b), in the year one thousand eight hundred and thirty-seven, so much of the said Acts as relates to the registration of marriages shall be repealed.

2. And be it enacted, That it shall be lawful for his Majesty to provide a proper office in London or Westminster, to be called "The General Register Office," for keeping a register of all births, deaths, and marriages of his Majesty's subjects in England, and to appoint for the said office under the Great Seal of the United Kingdom a registrar general of births, deaths, and marriages in England, and from time to time, at pleasure, to remove the said registrar general, and appoint some other person in his room.

3. [Lord Treasurer or Lords Commissioners of his Majesty's Treasury to appoint officers and fix salary.]

4. [Salaries to be paid out of the Consolidated Fund (c).]

5. And be it enacted, That one of his Majesty's principal Secretaries of State (d), or the Registrar General, with the approbation of such principal secretary, from time to time may make regulations for the management of the said register office, and for the duties of the registrar general, clerks, officers, and servants of the said office, and of the registrars, deputy registrars, and superintendent registrars hereinafter mentioned in the execution of this Act, so that they be not contrary to the provisions herein contained; and the regulations so made and approved shall be binding on the said registrar general, clerks, officers, and servants, and on the registrars, deputy registrars, and superintendent registrars.

6. [Annual abstract of registers to be laid before Parliament.]

7. [Districts to be formed, and registrars and superintendent registrars to be appointed (d).]

8. [Officers of unions, &c., being dismissed to cease to act under this Act.]

9. And be it enacted, That the guardians shall provide and uphold, out of the monies coming to their hands or control as such guardians, a register office, according to a plan to be approved by the Registrar General, for preserving the registers to be deposited therein, as hereinafter provided (e);

4 G. 4, c. 76.

So much of recited Acts as relates to registration of marriages repealed.

General registry office to be provided in London or Westminster.

Regulations for conduct of officers to be framed under direction of Secretary of State.

Register offices to be provided in each Union.

(b) "Last day of June:" 7 Will. 4, c. 1, s. 1.

(c) By 17 & 18 Vict. c. 94, s. 1, these salaries and expenses are payable out of aids voted annually by Parliament.

(d) "Local Government Board," 34 & 35 Vict. c. 70. As regards the superintendent registrar, see p. 134, *ante*.

(e) The obligation of the guardians to provide and uphold a register office must be taken to extend to the providing not only a fire-proof

and the care of the said office and the custody of the registers deposited therein shall be given to the superintendent registrar of the union or parish or place having a board of guardians as aforesaid.

10. [Temporary registrars and superintendent registrars to be appointed for parishes not under the Poor Law Act.]

11. [In case of subsequent unions previous appointments to be vacated.]

12. [Deputy registrars of births and deaths to be appointed.]

Appoint-  
ments to be  
exempt  
from stamp  
duties.

13. And be it enacted, That the appointments of registrars, deputy registrars, and superintendent registrars, and the duplicates and certified copies of registers hereinafter mentioned, shall be exempt from all stamp duties.

Register  
boxes to be  
provided.

14. And be it enacted, That the Registrar General shall furnish to every superintendent registrar, for the use of the registrars under his superintendence, a sufficient number of strong iron boxes to hold the register books to be kept by such registrar; and every such box shall be furnished with a lock and two keys, and no more; and one of such keys shall be kept by the registrar, and the other key shall be kept by the superintendent registrar; and the register books of each district, while in the custody of the registrar, and not in use, shall be always kept in the register box, and the register box shall always be left locked.

15 [All books, &c. to be transferred on removal of registrar.]

16. [Registrar and deputy to dwell in the district, and their names and additions to be put on their dwelling houses.]

Register  
books to be  
provided.

17. And be it enacted, That the Registrar General shall cause to be printed, on account of the said register office, a sufficient number of register books for making entries of all births, deaths, and marriages of His Majesty's subjects in England, according to the forms of Schedules (A.), (B.), (C.) to this Act annexed; and the register books shall be of durable materials, and in them shall be printed upon each side of every leaf the heads of information herein required to be known and registered of births, deaths, and marriages respectively; and every page of each of such books shall be numbered progressively from the beginning to the end, beginning with number one; and every place of entry shall be also numbered progressively from the beginning to the end of the book, beginning with number one; and every entry shall be divided from the following entry by a printed line.

[18 to 29 relate to the registration of births and deaths.]

Marriage  
register  
books to be  
furnished to  
clergy, &c.

30. And be it enacted, That the Registrar General shall furnish or cause to be furnished to the rector, vicar, or curate of every church and chapel in England wherein marriages may lawfully be solemnized, and also to every person whom

repository or iron boxes for the safe custody of the registers, but also the necessary furniture, &c., for enabling the office to be used for the purposes intended.

the recording clerk of the Society of Friends commonly called Quakers, at their central office in London, shall from time to time certify in writing under his hand to the Registrar General to be a registering officer in England of the said society, and also to every person whom the president for the time being of the London committee of deputies of the British Jews shall from time to time certify in writing under his hand to the Registrar General to be the secretary of a synagogue in England of persons professing the Jewish religion, a sufficient number in duplicate of marriage register books, and forms for certified copies thereof, as hereinafter provided; *and the cost of all such books and forms shall be paid by the churchwardens and overseers of the parish or chapelry out of the monies in their hands as such churchwardens and overseers, or by the registering officer or secretary respectively to whom the same shall be furnished (a).*

31. And be it enacted, That every clergyman of the Church of England, immediately after every office of matrimony solemnized by him, shall register in duplicate in two of the marriage register books the several particulars relating to that marriage according to the form of the said Schedule (C.); and every such registering officer of the Quakers, as soon as conveniently may be after the solemnization of any marriage between two Quakers in the district for which he is registering officer, and every such secretary of a synagogue, immediately after every marriage solemnized between any two persons professing the Jewish religion, of whom the husband shall belong to the synagogue whereof he is secretary, shall register or cause to be registered in duplicate in two of the said marriage register books the several particulars relating to that marriage according to the form of the said Schedule (C.); and every such registering officer or secretary, whether he shall or shall not be present at such marriage, shall satisfy himself that the proceedings in relation thereto have been conformable to the usages of the said society, or of the persons professing the Jewish religion, as the case may be; and every such entry as hereinbefore is mentioned (whether made by such clergyman or by such registering officer or secretary respectively as aforesaid) shall be signed by the clergyman or by the said registering officer or secretary, as the case may be, and by the parties married, and by two witnesses, and shall be made in order from the beginning to the end of each book, and the number of the place of entry in each duplicate marriage register book shall be the same.

32. And be it enacted, That in the months of April, July, October, and January, on such days as shall from time to time be appointed by the Registrar General, every registrar

Marriage registers to be kept in duplicate.

Certified copies of registers of births and

(a) So much of this section as relates to the cost of books and forms is repealed by 21 & 22 Vict. c. 25, s. 6.

deaths to be sent quarterly, and the register books when filled, to the superintendent registrar.

Duplicates and certified copies of registers of marriages to be sent to superintendent registrar.

shall make, and deliver to the superintendent registrar of his district, on durable materials, a true copy, certified by him under his hand according to the form of Schedule (D.) to this Act annexed, of all the entries of births and deaths in the register book kept by him since the last certificate, the first of such certificates to be given in the month of *July* [October (a)] in the year one thousand eight hundred and thirty-seven, and to contain all the entries made up to that time; and the superintendent registrar shall verify the same, and if found to be correct shall certify the same under his hand to be a true copy; and if there shall have been no birth or death registered since the delivery of the last certificate the registrar shall certify the fact, and such certificate shall be delivered to the superintendent registrar as aforesaid, and countersigned by him; and the registrar shall keep safely each of the said register books until it shall be filled, and shall then deliver it to the superintendent registrar, to be kept by him with the records of his office.

33. And be it enacted, That the rector, vicar, or curate of every such church and chapel, and every such registering officer and secretary, shall in the months of April, July, October, and January respectively, make and deliver to the superintendent registrar (b) of the district in which such church or chapel may be situated, or which may be assigned by the Registrar General to such registering officer or secretary, on durable materials, a true copy certified by him under his hand of all the entries of marriages in the register book kept by him since the last certificate, the first of such certificates to be given in the month of *July* [October (a)] one thousand eight hundred and thirty-seven, and to contain all the entries made up to that time (c), and if there shall have been no marriage entered therein since the last certificate, shall certify the fact under his hand, and shall keep the said marriage register books safely until the same shall be filled; and one copy of every such register book, when filled, shall be delivered to the superintendent registrar of the district in which such church or chapel may be situated, or which shall have been assigned as aforesaid to such registering officer or secretary, and the other copy of every such register book kept by any such rector, vicar, or curate shall remain in the keeping of such rector, vicar, or curate, and shall be kept by him with the registers of baptisms and burials of the parish or chapelry within which the marriages registered therein shall have been solemnized; and the other copy of every such register book of marriages among the people called Quakers,

(a) See 7 Will. 4, c. 1, s. 2.

(b) See 1 Vict. c. 22, s. 29; it will be sufficient if the copies be delivered to a registrar within the district.

(c) As to the payment for these copies, see 7 Will. 4 & 1 Vict. c. 22, s. 27.

and among persons professing the Jewish religion respectively, shall remain under the care of the said people or persons respectively, to be kept with their other registers and records, and shall, for the purposes of this Act, be still deemed to be in the keeping of the registering officer or secretary for the time being respectively.

34. And be it enacted, That every superintendent registrar shall, four times in every year, on such days as shall be therefore named by the Registrar General, send to the Registrar General all the certified copies of the registers of births, deaths, and marriages which he shall have so received during the three calendar months next preceding such quarterly days of transmission respectively; and if it shall appear, by interruption of the regular progression of numbers or otherwise, that the copy of any part of any book has not been duly delivered to him, he shall procure, as far as possible, consistently with the provisions of this Act, that the same may be remedied and supplied; and every such superintendent registrar shall be entitled to receive the sum of twopence for every entry in such certified copies; and every superintendent registrar shall make out an account four times in every year of the number of entries in the certified copies sent to him during the last quarter, and the certified copies so sent to the general registry office shall be thereafter kept in the said office in such order and manner as the Registrar General, under the direction of the *Secretary of State* (d), shall think fit, so that the same may be most readily seen and examined.

Superintendent registrars to send certified copies of registers to the general register office.

35. And be it enacted, That every rector, vicar, or curate, and every registrar, registering officer, and secretary, who shall have the keeping for the time being of any register book of births, deaths, or marriages, shall at all reasonable times allow searches to be made of any register book in his keeping and shall give a copy certified under his hand of any entry or entries in the same, on payment of the fee herein-after mentioned; (that is to say,) for every search extending over a period not more than one year the sum of one shilling, and sixpence additional for every additional year, and the sum of two shillings and sixpence for every single certificate.

Searches may be made, and certificates given by the persons keeping the registers.

36. And be it enacted, That every superintendent registrar shall cause indexes of the register books in his office to be made, and kept with the other records of his office; and that every person shall be entitled at all reasonable hours to search the said indexes, and to have a certified copy of any entry or entries in the said register books under the hand of the superintendent registrar, on payment of the fees herein-after mentioned; (that is to say,) for every general search the sum of five shillings, and for every particular search the sum of one shilling, and for every such certified copy the sum of two shillings and sixpence.

Indexes to be made at the superintendent registrar's office, and persons allowed to search them.

(d) "Local Government Board;" 34 & 35 Vict. c. 70.



Indexes to  
be kept at  
general  
register  
office  
Searches  
allowed, and  
certified co-  
pies given.

Certified  
copies given  
for legal  
purposes  
only to be  
sealed

From the  
Registrar  
General  
shall be  
accounted  
for and  
paid by  
the  
Registrar  
General

And he it  
enacted,  
That it  
shall be  
lawful for  
every  
minister  
of the  
Gospel

And he it  
enacted,  
That every  
person who  
shall wil-  
fully make  
or cause to  
be made, for  
the purpose  
of being  
entered in  
any register  
of birth, death,  
or marriage,  
any false  
statement  
touching any  
of the particulars  
herein required  
to be known  
and registered,  
shall be subject  
to the same pains  
and penalties  
as if he were  
guilty of perjury.

And he it  
enacted,  
That every  
person who  
shall refuse  
or without  
reasonable  
cause omit to  
register any  
marriage  
solemnized  
by him, or  
which he ought  
to register, and  
every

37. And be it enacted, That the Registrar General shall cause indexes of all the said certified copies of the registers to be made and kept in the general register office; and that every person shall be entitled, on payment of the fees hereinafter mentioned, to search the said indexes between the hours of ten in the morning and four in the afternoon of every day, except Sundays, Christmas day, and Good Friday, and to have a certified copy of any entry in the said certified copies of the registers, and for every general search of the said indexes shall be paid the sum of twenty shillings, and for every particular search the sum of one shilling, and for every such certified copy the sum of two shillings and sixpence, and no more, shall be paid to the Registrar General or such other officer as shall be appointed for that purpose on his account.

38. And be it enacted, That the Registrar General shall cause to be made a seal of the said register office, and the Registrar General shall cause to be sealed or stamped there-with all certified copies of entries given in the said office; and all certified copies of entries purporting to be sealed or stamped with the seal of the said register office shall be received as evidence of the birth, death, or marriage to which the same relates, without any further or other proof of such entry; and no certified copy purporting to be given in the said office shall be of any force or effect which is not sealed or stamped as aforesaid.

39. And be it enacted, That every sum received under the provisions of this Act by or on account of the Registrar General shall be accounted for and paid by the Registrar General, at such times as the Lords Commissioners of the Treasury from time to time shall direct, into the Bank of England, to the credit of His Majesty's Exchequer, according to the provisions of an Act passed in the fourth and fifth years of His Majesty, entitled "An Act to regulate the Office of the Receipt of His Majesty's Exchequer at Westminster."

40. And be it enacted, That it shall be lawful for every clergyman of the Church of England, who shall solemnize any marriage in England, and for every registering officer of the Quakers and every secretary of a Synagogue, after the next next day of March, to ask of the parties married the several particulars herein required to be registered touching such marriage.

41. And be it enacted, That every person who shall wilfully make or cause to be made, for the purpose of being entered in any register of birth, death, or marriage, any false statement touching any of the particulars herein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury.

42. And be it enacted, That every person who shall refuse or without reasonable cause omit to register any marriage solemnized by him, or which he ought to register, and every

registrar who shall refuse or without reasonable cause omit to register any birth or death of which he shall have had due notice as aforesaid, and every person having the custody of any register book, or certified copy thereof or of any part thereof, who shall carelessly lose or injure the same or carelessly allow the same to be injured whilst in his keeping, shall forfeit a sum not exceeding fifty pounds for every such offence.

births,  
deaths, and  
marriages,  
or for losing  
or injuring  
the register.

43. [Penalty for destroying or falsifying register books. Repealed. Re-enacted with additions by Forgery Act, 24 & 25 Vict. c. 98, ss. 36, 37.]

44. Provided always, and be it enacted, That no person charged with the duty of registering any birth, death, or marriage, who shall discover any error to have been committed in the form or substance of any such entry, shall be therefore liable to any of the penalties aforesaid if within one calendar month next after the discovery of such error, in the presence of the parents of the child whose birth may have been so registered, or of the parties married, or of two persons attending upon any person in his or her last illness, whose death may have been so registered, or in case of the death or absence of the respective parties aforesaid, then in the presence of the superintendent registrar, and of two other credible witnesses who shall respectively attest the same, he shall correct the erroneous entry, according to the truth of the case by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made: Provided also, that in the case of a marriage register he shall make the like marginal entry, attested in like manner in the duplicate marriage register book to be made by him as aforesaid, and in every case shall make the like alteration in the certified copy of the register book to be made by him as aforesaid, or in case such certified copy shall have been already made, provided he shall make and deliver in like manner a separate certified copy of the original erroneous entry, and of the marginal correction therein made.

Accidental  
errors may  
be cor-  
rected.

45 to 47. [Recovery of penalties on summary conviction. Appeal.]

48. [Correspondence of Registrar General relating to this Act to be free of postage.]

49. Provided always, and be it enacted, That nothing herein contained shall affect the registration of baptisms or burials as now by law established, or the right of any officiating minister to receive the fees now usually paid for the performance or registration of any baptism, burial, or marriage.

Registers of  
baptisms  
and burials  
may be kept  
as hereto-  
fore.

50. [Registrar General to furnish notices to guardians of unions, &c., specifying acts required to be done by parties registering.]

## Appendix.

**Schedules to which this Act refers.**

**SCHEDULES (A.) & (B.). (a).**

**SCHEDULE (C).**

1836.—MARRIAGES solemnized at the *Parish Church* in the *Parish of Marylebone*, in the County of *Middlesex*.

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the Time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
1	17 March, 1836.	William Hastings.	Of full Age.	Bachelor.	Carpenter.	3, South Street.	Peter Hastings.	Upholsterer.
		Sophia Ann Mitchell.	Minor.	Spinster.	—	17, High Street.	Geoffry Mitchell.	Butcher.

Married in the *Parish Church*, according to the rites and ceremonies of the *Established Church*, by licence or *after banns*, by me,  
*James Hollinghead, Vicar.*

This marriage was solemnized between us, { William Hastings, } in the { John Hastings. }  
 { Sophia Ann Mitchell, } presence of us, { Geoffrey Mitchell. }

[The words in *italics* and figures in this Schedule to be filled in as the case may be.]

(a) These schedules prescribe the form for registering births and deaths.

## SCHEDULE (D.)

I *John Cox*, Registrar of Births and Deaths in the *District of Marylebone, North*, in the County of *Middlesex*, do hereby certify, That this is a true copy of the Registrar's Book of Births [or Deaths] within the said *District*, from the entry of the birth [or death] of *James Green*, No. 1, to the entry of the birth [or death] of *William Strange*, No. 34. Witness my hand this *Seventh* day of *March* 1838.

*John Cox*, Registrar.

## SCHEDULES (E) and (F)

*Relate to the Registration of Deaths.*

## SCHEDULE (C).

I *Gilbert Elliot*, Vicar of *Barming*, in the County of *Kent*, do hereby certify, That I have this day baptised by the name of *Thomas* a *Male* child, produced to me by *William Green*, as the Son of *William Green* and *Rebecca Green*, and declared by the said *William Green* to have been born at *Marylebone*, in the County of *Middlesex*, on the *Seventh* day of *January* 1836. Witness my hand this *First* day of *December*, 1838.

*Gilbert Elliot*, Vicar.

[The words in *italics* and figures in the above Schedules to be filled in as the case may be.]

## SUSPENSORY ACT.

7 WILL. 4, c. 1.

*An Act to suspend for a limited time the operation of two Acts passed in the last Session of Parliament for registering Births, Deaths, and Marriages in England, and for Marriages in England.* [24th Feb., 1837.]

[Enacts that the two recited Acts shall be construed as if the words "last day of June" had been inserted instead of

the words "first day of March ;" and that the first quarterly delivery of copies of registers shall be in the month of October, 1837.]

## MARRIAGE AND REGISTRATION ACTS AMENDMENT.

7 WILL. 4 & 1 VICT. C. 22.

*An Act to explain and amend two Acts passed in the last Session of Parliament, for Marriages, and for registering Births, Deaths, and Marriages in England.*

[30th June, 1837.]

6 & 7 Will. 4,  
c. 85.  
6 & 7 Will. 4,  
c. 86.

WHEREAS by an Act made in the last Session of Parliament, intituled "An Act for Marriages in England," and by another Act, intituled "An Act for registering Births, Deaths, and Marriages in England," sundry provisions were made for the duties of superintendent registrars and also of registrars and deputy registrars of births, deaths, and marriages, which several provisions require to be further explained and amended : And whereas the recited Acts require amendment in other respects : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that where in the said Act for marriages in England provision is made for giving notice of marriage to any registrar, and where in the last-recited Act, or any schedule thereunto annexed, mention is made of any such notice, or of the registrar's certificate of any such notice, the same shall be construed respectively to mean the notice to be given to the superintendent registrar, and the certificate thereof to be issued by the superintendent registrar, according to the provisions for that purpose contained in the last-recited Act.

Meaning of  
the words  
notice to  
the registrar  
and  
registrar's  
certificate.

2. [Certificate of baptismal name to be made by registrar or superintendent registrar, as the case may be.]

Superintendent  
registrars  
unduly  
issuing  
licences, or  
solemnizing  
marriages,  
guilty of  
felony.

3. And be it enacted, That every superintendent registrar who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the notice shall have been entered by the superintendent registrar, as provided by the said Act for marriages, or who shall knowingly and wilfully solemnize or permit to be solemnized in his office any marriage in the last-recited Act declared to be null and void, shall be guilty of felony.

4. [Whereunto offenders shall be committed.]

Registrar

5. And be it enacted, That for the purpose of enabling any

person to recover costs and damages in any action, as provided by the said Act for marriages, from any person who shall have entered a caveat on frivolous grounds with the superintendent registrar, a copy of the declaration of the Registrar General purporting to be sealed with the seal of the General Register Office shall be evidence that the Registrar General has declared such caveat to have been entered on frivolous grounds, and that they ought not to obstruct the grant of the licence or issue of the certificate, as the case may be; and such declaration shall have the effect of the declaration required in such case by the said Act for marriages.

General's certificate of frivolous caveat to be evidence.

6. [Commencement of Marine Register Book.]

7. [Privilege of franking extended to the United Kingdom.]

8. [Relates to registers of births and deaths.]

9. [Provision for including extra-parochial places in registrars' districts.]

10. [Registrar General may unite two or more unions, &c., to form one superintendent registrar's district.]

11. [Registrar General may divide union into districts.]

12. And be it enacted, That the superintendent registrar's office shall be taken, for the purposes of the said Act for marriages, and for registering births, deaths, and marriages, and of this Act, to be within the district of which it is the register office, although not locally situated therein.

As to locality of superintendent registrar's office.

13. [Provisions if guardians neglect to form registrars' districts.]

14. And be it enacted, That in every case in which the clerk to any such board of guardians shall not think fit or shall be disqualified to accept the office of superintendent registrar, and the guardians shall refuse or neglect during fourteen days after being required so to do by the Registrar General to appoint a superintendent registrar properly qualified, and in every case of vacancy of the office of registrar or superintendent registrar in any such union, parish, or place in which the guardians shall refuse or neglect during fourteen days after such vacancy to appoint a registrar or superintendent registrar properly qualified, the appointment shall lapse to the Registrar General.

If guardians neglect to appoint registrars or superintendent registrars the Registrar General to appoint them.

15. [Registrar General may appoint an assistant to act for him in certain cases.]

16. And be it enacted, That every superintendent registrar shall have the power, subject to the approval of the Registrar General, to appoint by writing under his hand a fit person to act as his deputy in case of the illness or absence of such superintendent registrar; and every such deputy superintendent registrar, whilst so acting, shall have all the powers and duties and be subject to all the provisions and penalties declared by the said Acts for marriages, and for registering births, deaths, and marriages in England, and by

Superintendent registrar may appoint a deputy to act for him in certain cases.

this Act, concerning superintendent registrars; and in case of the death of the superintendent registrar shall act as superintendent registrar until another be appointed; and every superintendent registrar shall be civilly responsible for the acts and omissions of his deputy.

17. [If more than one clerk to board of guardians, which of them to be superintendent registrar].

18. [Exemption of registrars from parochial and corporate offices.]

19 to 21. [Contain provisions enabling guardians to borrow money for providing a district register office, and also in case of their neglect to provide an office.]

22. And be it enacted, That the Registrar General shall be authorized to fix from time to time the number of registrars of marriage to be appointed by any superintendent registrar; and no superintendent registrar shall have power to appoint more than the number so fixed for him to appoint.

23. And be it enacted, That the Registrar General, under the direction of one of Her Majesty's principal secretaries of state, shall take order that the solemn declaration and form of words provided to be used in the case of marriages under the said Act for marriages be truly and exactly translated into the Welsh tongue, and shall cause the same so translated to be furnished to every registrar of marriages throughout Wales, and in all places where the Welsh tongue is commonly used; and it shall be lawful to use the declaration and form of words so translated, and published by authority, in all places where the Welsh tongue is commonly used or preferred, in such manner and form and to the same intents and purposes as by the said Act is prescribed in the English tongue.

24. [Where there are no guardians, notices of marriage to be suspended in the superintendent registrar's office, and particulars of the same sent to the registrar (a).]

25. [Cost of parochial marriages register books, and forms, how to be defrayed (b).]

26. And be it enacted, That the certified copies of the entries of births, deaths, and marriages required by the said Acts for marriages, and for registering births, deaths, and marriages, or by an Act passed in this session of Parliament, intituled "An Act to suspend for a limited time the operation of two Acts passed in the last session of Parliament, for registering Births, Deaths, and Marriages in England, and for Marriages in England," to be made and delivered to the

Registrar General to limit the number of registrars of marriage.

Provision for marriages in the Welsh tongue.

Certified copies of register books to be made up quarterly.  
7 W. 4, c. 1.

(a) The provisions of this section are superseded by those of 19 & 20 Vict. c. 119, s. 4.

(b) The provisions of this section are repealed by 21 & 22 Vict. s. 6.

superintendent registrar, and also the certificates to be made and delivered to the superintendent registrar that there has been no birth, death, or marriage registered since the delivery of the last certificate, shall in every case be made up and refer respectively to the last days of March, June, September, and December then next preceding, and not to the time of the making or delivery of such certified copy or certificate when made on any subsequent day.

27. And whereas it is required by the said Act for registering births, deaths, and marriages, that every rector, vicar, and curate shall register in duplicate the particulars of every marriage solemnized by him, one of which registers he is also required to deliver when filled to the superintendent registrar of the district in which such church or chapel may be situated, and also four times in every year to deliver to the said superintendent registrar a true copy, certified by him under his hand, of all the entries of marriages in the register book kept by him since the last certificate: Be it enacted, That the said superintendent registrar shall pay or cause to be paid to the said rector, vicar, or curate, the sum of sixpence for every entry contained in such certified copy, which sum shall be reimbursed to the said superintendent registrar by the guardians or overseers of the union, parish, or place for which he shall be appointed superintendent registrar as aforesaid, in like manner as by the said Act, is provided for the payment of the registrar on production of his accounts to the superintendent registrar.

Clergymen  
to be paid  
for making  
register in  
duplicate.

28. And be it enacted, That every person who under the provisions of the said Acts for marriages, and for registering births, deaths, and marriages, or either of them, as amended by this Act, is required to make and deliver to any superintendent registrar a certified copy of the entries of any births, deaths, or marriages registered by him, or the certificate required by the said Acts as amended by this Act that there have been no entries since the last certificate, and who after being duly required to deliver such certified copy of such certificate as aforesaid shall refuse or during one calendar month neglect so to do, shall be liable for every such offence to forfeit a sum not exceeding ten pounds, to be recovered as other penalties for offences against the said Acts are made recoverable: Provided always, that in such case a moiety of the penalty shall not go to the informer, but the whole shall go to the Registrar General, or such other person as the Commissioners of the Treasury shall appoint, for the use of Her Majesty.

Penalty for  
neglecting  
to send  
certified  
copies of  
register  
books.

29. And be it enacted, That in every case in which any rector, vicar, or curate is required by either of the said Acts for marriages, and for registering births, deaths, and marriages, or by this Act, to give or deliver any notice, certificate, or **certified copy** to any superintendent registrar, it shall be

Certificates,  
&c., re-  
quired to  
be given to  
any super-  
intendent



registrar may be given to any registrar, who is to forward the same, &c.

sufficient for such rector, vicar, or curate to give or deliver the same to some registrar under the superintendence of such superintendent registrar; and every registrar, on receiving any such notice, certificate or certified copy, shall give or deliver the same to the superintendent registrar; and each superintendent registrar shall direct the registrars of births and deaths under his superintendence quarterly, or oftener if he shall think fit or shall be so ordered to do by the Registrar General, to collect the notices, certificates, and certified copies from every rector, vicar, and curate within his district.

30. [Authority for administering oaths.]

31. [Limitation as to summary convictions to 3 months.]

32. [Stamp duty not payable on licensing chapels for marriages (a).]

Banns may be published in chapels where marriages may be solemnized.

33. And be it enacted, That the banns of marriage of any persons may be published in any chapel licensed by the bishop, according to the provisions of the said Act for marriages, for the solemnization of marriages, in which those persons might lawfully be married; and instead of the notice required by the said Act the words "Banns may be published and marriages may be solemnized in this chapel" shall be placed in some conspicuous part in the interior of every such chapel.

Marriages may be in licensed chapels, though only one of the parties is resident in the district.

34. And whereas doubts may arise whether under the said recited Acts it is lawful for the bishop to license chapels for marriages between parties, only one of whom resides within the district specified in such licence: Be it therefore enacted and declared, that all such licences shall be construed to extend to and authorize marriages in such chapels between parties, one or both of whom is or are resident within the said district: Provided always, that where the parties to any marriage intended to be solemnized after publication of banns shall reside within different ecclesiastical districts, the banns for such marriage shall be published as well in the church or chapel wherein such marriage is intended to be solemnized as in the chapel licensed under the provisions of the said recited Act for the other district within which one of the parties is resident, and if there be no such chapel then in the church or chapel in which the banns of such last-mentioned party might be legally published if the said recited Act had not been passed.

Publication of banns where the parties reside in different districts.

Any building used exclusively as a Roman Catholic chapel for one year,

35. And whereas certain provisions are made in the Act intitled "An Act for Marriages in England," relating to the celebration of marriages in separate buildings: Be it enacted, that any building which shall have been licensed and used during one year next before registration for public religious

(a) See "The Stamp Act, 1870," which imposes a duty of 10s. on the bishop's licence.

orship as a Roman Catholic chapel exclusively, shall be taken to be a separate building for the purpose of being registered for the celebration of marriages, notwithstanding the same shall be under the same roof with any other building, shall form a part only of a building.

36. And whereas it is enacted in the said recited Act for marriages in England, that where by any law or canon in force before the passing of the said Act, it is provided that any marriage may be solemnized after publication of banns, such marriage may be solemnized in like manner on production of the registrar's certificate as therein-after provided: Be it enacted, that the giving of notice to the superintendent registrar, and the issue of the superintendent registrar's certificate, as in the said Act and by this Act provided, shall be used and stand instead of the publication of banns to all intents and purposes, where no such publication shall have taken place; and every parson, vicar, minister, or curate in England shall solemnize marriage after such notice and certificate as aforesaid in like manner as after due publication of banns (b): Provided always, that the church wherein any marriage according to the rites of the Church of England shall so be solemnized shall be within the district of the superintendent registrar by whom such certificate as aforesaid shall have been issued.

may be registered for celebration of marriages.

Notice to superintendent registrar, and issue of certificate by him, to be used and stand instead of banns.

### MARRIAGES OUT OF THE DISTRICT.

3 & 4 VICT. c. 72.

*An Act to provide for the Solemnization of Marriages in the Districts in or near which the Parties reside (c).*

[7th August, 1840.]

WHEREAS by an Act passed in the fourth year of the reign of King George the Fourth, intituled "An Act for amending the Laws respecting the Solemnization of Marriage in England," it is provided, that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever: and

4 G. 4, c. 76

(b) The obligation on the clergy to solemnize marriage on the production of the superintendent registrar's certificate in lieu of banns, as been removed by sect. 11 of 19 & 20 Vict. c. 119, which requires the consent of the minister to such solemnization.

(c) The title of this statute does not clearly express the object for which it was intended to provide, namely, for marriages out of the districts of the residence of the parties in cases where no registered place of worship of their religious persuasion existed in such districts.

6 & 7 Will. 4,  
c. 85.

7 Will. 4 &  
1 Vict. c. 22.

Certificate  
of notice  
not to be  
granted for  
marriage  
out of the  
district  
where the  
parties  
dwell,  
except as  
hereinafter  
enacted.

In what  
case mar-  
riage may be  
solemnized  
out of the  
district in  
which the  
parties  
dwell.

whereas by an Act passed in the seventh year of the reign of his late Majesty, intituled "An Act for Marriages in England," provision is made for marriages intended to be solemnized in England, after notice given according to the forms authorized by the last-recited Act, which Act has been explained and amended by an Act passed in the first year of the reign of her present Majesty: And whereas it is expedient to restrain marriages under the said Act of his late Majesty from being solemnized out of the district in which one of the parties dwells, unless either of the parties dwells in a district within which there is not any registered building wherein, under the provisions of the said Act of his late Majesty, as explained and amended by the said Act of her present Majesty, marriage is solemnized according to the form, rite, or ceremony the parties see fit to adopt: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it is not and shall not be lawful for any superintendent registrar to give any certificate of notice of marriage where the building in which the marriage is to be solemnized, as stated in the notice, *shall not be within the district wherein one of the parties shall have dwelt for the time required by the said Act of his late Majesty, except as hereinafter is enacted (a).*

2. And be it enacted, That it shall be lawful for any party intending marriage under the provisions of the said Act of his late Majesty, in addition to the notice required to be given by that Act, to declare at the time of giving such notice, by indorsement thereon, the religious appellation of the body of Christians to which the party professes to belong, and the form, rite, or ceremony which the parties desire to adopt in solemnizing their marriage, and that, to the best of his or her knowledge and belief, there is not within the district in which one of the parties dwells any registered building in which marriage is solemnized according to such form, rite, or ceremony, and the district nearest to the residence of that party in which a building is registered wherein marriage is so solemnized, and the registered building within such district in which it is intended to solemnize their marriage; and after the expiration of *seven days* [one whole day], or twenty-one days, as the case may require, under the said Act of his late Majesty, it shall be lawful for the superintendent registrar to whom any such notice shall have been given to issue his certificate according to the provisions of

(a) Marriages may be solemnized in registered buildings situate in districts in which neither of the parties dwells, under 19 & 20 Vict. c. 119, s. 14, as well as under this Act, in the special cases therein referred to.

that Act (b); and after the issuing of such certificate the parties shall be at liberty to solemnize the marriage in the registered building stated in such notice: provided always, that after any marriage shall have been solemnized it shall not be necessary in support of such marriage to give any proof of the truth of the facts herein authorized to be stated in the notice, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

3. And be it enacted, That the additional notice herein-before authorized to be given may be according to the form in the schedule to this Act annexed, or to a like effect.

Form of Notice.

4. And be it enacted, That every person who shall knowingly and wilfully make any false declaration under the provisions of this Act, for the purpose of procuring any marriage out of the district in which the parties or one of them dwell, shall suffer the penalties of perjury: provided always, that no such prosecution shall take place after the expiration of eighteen calendar months from the solemnization of such marriage.

Persons making false declarations guilty of perjury.

5. Provided always, and be it enacted, That, notwithstanding anything herein or in the said recited Acts, or either of them contained, the Society of Friends commonly called Quakers, and also persons professing the Jewish religion, may lawfully continue to contract and solemnize marriage according to the usages of the said society and of the said persons respectively, after notice for that purpose duly given, and certificate or certificates duly issued, pursuant to the provision of the said recited Act of his late Majesty, notwithstanding the building or place wherein such marriage may be contracted or solemnized be not situate within the district or either of the districts (as the case may be) in which the parties shall respectively dwell.

Provision as to marriages of members of the Society of Friends, and Jews.

6. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

Act may be amended this session.

### The Schedules to which the Act refers.

I the undersigned and within-named *James Smith*, do hereby declare that I, being [*here insert, a member of the Church of England, a Roman Catholic, Independent, Baptist, Presbyterian, Unitarian, or such other description of the religion of the party*], and the within-named *Martha Green*, in solemnizing our intended marriage, desire to adopt the form, rite or ceremony of the [*Roman Catholic Church, Independents, Baptists, Presbyterians, Unitarians, or other description*]

(b) He may grant licence, 19 & 20 Vict. c. 119, s. 9.

*of the form, rite, or ceremony the parties state it to be their desire to adopt*]; and to the best of my knowledge and belief there is not within the superintendent registrar's district in which [*I dwell*], or [*in which the said Martha Green dwells*], any registered building in which marriage is solemnized according to such form, rite or ceremony; and that the nearest district to [*my dwelling-place*], or to [*the dwelling-place of the said Martha Green*], in which a building is registered wherein marriage may be solemnized according to such form, rite, or ceremony, is the [*here insert the name by which the superintendent registrar's district is designated*]; and that we intend to solemnize our marriage in the registered building within that district known by the name of [*here insert the name by which the building has been registered*]. Witness my hand this tenth day of August One Thousand Eight Hundred and Forty.

(Signed) *James Smith.*

[The *italics* in this schedule to be filled up as the case may be.]

## IRISH MARRIAGE ACT, 1846.

9 & 10 VICT. c. 72.

*An Act to amend the Act for Marriages in Ireland, and for registering such Marriages.*

[26th August, 1846].

7 & 8 Vict.  
c. 81.

Marriages intended to be solemnized in Ireland between parties one of whom resides in England, notice of the same to be given to the

WHEREAS an Act was passed in the session of Parliament holden in the seventh and eighth years of the reign of her present Majesty, intituled "An Act for Marriages in Ireland, and for registering such Marriages:" And whereas it is expedient to amend the provisions of the same in respect of marriages of parties, one of whom may reside in England or Scotland: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in any case of a marriage intended to be solemnized in Ireland between parties one of whom shall be resident in England, such party so resident in England shall give notice in the form used in England in that behalf, or to the like effect, to the superintendent registrar of the district within which such party shall have dwelt for not less than seven days then next preceding, and shall state therein the name and surname and the profession or condition of each of the parties intending marriage, the dwelling-place of each

of them, and the time, not being less than seven days, during which each has dwelt therein, and the church or other building in which the marriage is to be solemnized, provided that if either party shall have dwelt in the place stated in the notice more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards; and such notice shall be dealt with in such manner, and such certificate shall given by such registrar in such manner, as is prescribed in an Act of the sixth and seventh years of the reign of his late Majesty king William the Fourth intituled "An Act for Marriages in England," provided that in such case such certificate shall not be issued before the expiration of seven days from the entry of such notice as aforesaid; and from and after the expiration of seven days from the issuing of such certificate the production of the same to the person duly authorized under the provisions of the said first-recited Act to grant a licence for marriage in such case shall be as valid and effectual to all intents and purposes for authorizing such person to grant a licence for marriage, and such certificate shall be as valid and effectual for all other purposes under the provisions of the said first-recited Act as any certificate of a registrar of a district in Ireland would be under the said Act if such party giving such notice were resident within such district in Ireland, and the other party to such intended marriage were also resident within another registrar's district in Ireland.

superintendent registrar of the district in England within which the party resides seven days preceding, &c. 6 & 7 Will. 4, c. 85.

### CONSULAR MARRIAGES ACT.

12 & 13 VICT. c. 68.

*An Act for facilitating the Marriage of British Subjects resident in Foreign Countries.* [28th July, 1849.]

WHEREAS an Act was passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled, "An Act to relieve his Majesty's subjects from all doubts concerning the validity of certain Marriages solemnized abroad": And whereas the provisions of the said Act are applicable only to the cases of marriages solemnized by a minister of the Church of England in the chapel or house of any British ambassador or minister residing within the country to the Court of which he is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing at such factory, and of marriages solemnized within the British lines by any chaplain or officer, or other person officiating under the orders of the commanding officer of a British army serving abroad: And whereas

4 G. 4, c. 91.

Marriages solemnized abroad in manner provided by this Act to be valid.

Notice of every intended marriage to be given to consul.

Consul to file notices, register them in a book, and suspend copies in the office of the consulate.

large numbers of her Majesty's subjects are resident abroad at places where the provisions of the said Act are not applicable : And whereas it is expedient to afford greater facilities for the marriage of her Majesty's subjects resident abroad : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all marriages (both or one of the parties thereto being subjects or a subject of this realm) (a) which from and after the passing of this Act shall be solemnized in the manner in this Act provided in any foreign country or place where there shall be a British consul duly authorized to act in such foreign country or place under this Act shall be deemed and held to be as valid in the law as if the same had been solemnized within her Majesty's dominions with a due observance of all forms required by law.

2. And be it enacted, That in every case of marriage intended to be solemnized under the provisions of this Act one of the parties shall give notice under his or her hand, in the form of the Schedule (A.) to this Act annexed or to the like effect, to the consul within whose district both the parties shall have dwelt, not less than one calendar month then next preceding, and shall state therein the name and surname and the profession or condition of each of the said parties intending marriage, the dwelling place of each of them, and that each of them has dwelt within such district during such one calendar month at the least (b).

3. And be it enacted, That the consul shall file all such notices, and keep them with the archives of his consulate, and shall also forthwith enter a true and exact copy of every such notice fairly into a register to be by him kept for that purpose, and shall likewise suspend a like true and exact copy of every such notice in some conspicuous place in the office of his consulate during seven successive days if the marriage is to be solemnized by licence, or twenty-one successive days if the marriage is to be solemnized without licence, before any marriage shall be solemnized in pursuance of such notice ; and the said register and suspended copies shall be open at all reasonable times, without fee, to the inspection of persons desirous of inspecting the same : and upon the receipt of every such notice, and before registering and suspending the

(a) When one of the parties is not a British subject it will be the duty of the consul to satisfy himself as to that party that the requirements of the local law of marriage have, wherever practicable, been duly complied with. See Appendix, No. XI. *post*.

(b) This requirement of one month's previous residence within the district of the consul by each of the parties before notice of an intended marriage can be given, is productive of much inconvenience. The Act urgently requires amendment in this particular.

same, the consul shall be entitled to have a fee of ten shillings.

4. And be it enacted, That any person authorized in that behalf as hereinafter mentioned may, at any time before the solemnization of any such intended marriage, forbid the solemnization of such intended marriage, by writing the word "forbidden" opposite to the entry of the notice of such intended marriage in the register, and by subscribing thereto his or her name and place of abode, and his or her character in relation to either of the parties by reason of which he or she is so authorized; and in case the solemnization of any such intended marriage shall be so forbidden the notice shall be void, and such intended marriage shall not be solemnized under such notice.

Persons  
duly autho-  
rized may  
forbid the  
solemniza-  
tion of any  
marriage.

5. And be it enacted, That the like consent shall be required to any marriage by licence under the provisions of this Act as is now required by law to marriages solemnized in England by licence; and every person whose consent to a marriage by licence is required by law is hereby authorized to forbid a marriage under the provisions of this Act, whether such marriage is intended to be by licence or without licence.

Like con-  
sent to any  
marriage by  
licence as is  
required in  
England.

6. And be it enacted, That before any marriage by licence shall be solemnized under this Act both the parties intending marriage shall appear before the consul, and each of them shall make oath, or shall make his or her solemn affirmation or declaration instead of an oath, that he or she believeth that there is not any impediment of kindred or alliance, or other lawful hindrance, to the said marriage, and that both of the said parties have for the space of one calendar month immediately preceding respectively had their usual places of abode within the district of such consul, and where either of the parties not being a widower or widow, shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, as the case may be; and when and as soon as such oath, affirmation, or declaration shall have been made, the consul shall, on payment of a fee of twenty shillings, certify under his hand on the original notice and also in the register that licence has been granted for the solemnization of the marriage in respect of which such notice was given; and such certificate shall be deemed and taken to be a licence for such marriage.

Consul may  
grant li-  
cences for  
marriage.

7. And be it enacted, That any person, on payment of a fee of twenty shillings to the consul, may enter a caveat with the consul against the solemnization of the marriage of any person named therein, such caveat being signed by or on behalf of the person who enters the same, and stating his or her place of residence and the ground of objection on which his or her caveat is founded; and if any caveat be entered as aforesaid no marriage of the person named therein shall be

Caveat  
against  
marriages  
may be  
lodged with  
consul.



Marriages solemnized abroad in manner provided by this Act to be valid.

Notice of every intended marriage to be given to consul.

Consul to file notices, register them in a book, and suspend copies in the office of the consulate.

large numbers of her Majesty's subjects are resident abroad at places where the provisions of the said Act are not applicable : And whereas it is expedient to afford greater facilities for the marriage of her Majesty's subjects resident abroad : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all marriages (both or one of the parties thereto being subjects or a subject of this realm) (a) which from and after the passing of this Act shall be solemnized in the manner in this Act provided in any foreign country or place where there shall be a British consul duly authorized to act in such foreign country or place under this Act shall be deemed and held to be as valid in the law as if the same had been solemnized within her Majesty's dominions with a due observance of all forms required by law.

2. And be it enacted, That in every case of marriage intended to be solemnized under the provisions of this Act one of the parties shall give notice under his or her hand, in the form of the Schedule (A.) to this Act annexed or to the like effect, to the consul within whose district both the parties shall have dwelt, not less than one calendar month then next preceding, and shall state therein the name and surname and the profession or condition of each of the said parties intending marriage, the dwelling place of each of them, and that each of them has dwelt within such district during such one calendar month at the least (b).

3. And be it enacted, That the consul shall file all such notices, and keep them with the archives of his consulate, and shall also forthwith enter a true and exact copy of every such notice fairly into a register to be by him kept for that purpose, and shall likewise suspend a like true and exact copy of every such notice in some conspicuous place in the office of his consulate during seven successive days if the marriage is to be solemnized by licence, or twenty-one successive days if the marriage is to be solemnized without licence, before any marriage shall be solemnized in pursuance of such notice ; and the said register and suspended copies shall be open at all reasonable times, without fee, to the inspection of persons desirous of inspecting the same ; and upon the receipt of every such notice, and before registering and suspending the

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(a) When one of the parties is not a British subject it will be the duty of the consul to satisfy himself as to that party that the requirements of the local law of marriage have, wherever practicable, been duly complied with. See Appendix, No. XI. *post*.

(b) This requirement of one month's previous residence within the district of the consul by each of the parties before notice of an intended marriage can be given, is productive of much inconvenience. The Act urgently requires amendment in this particular.

Ireland, or according to such other form and ceremony as the parties thereto may seem fit to adopt, or may, where the parties shall so desire, be solemnized by the consul; and in the solemnization of every such marriage not solemnized according to the rites of the United Church of England and Ireland, in some part of the ceremony, and in the presence of the consul and witnesses, each of the parties shall declare,

"I do solemnly declare, That I know not of any lawful impediment why I A. B. may not be joined in matrimony to C. D."

And each of the parties shall say to the other,

"I call upon these persons here present to witness, That I A. B. do take thee, C. D., to be my lawful wedded wife [or husband]."

10. And be it enacted, That the consul shall be entitled, for every marriage which shall be solemnized under this Act by him or in his presence, to have from the parties married the sum of twenty shillings, if the marriage shall be by licence, and otherwise the sum of ten shillings.

Marriage fees to the consul.

11. And be it enacted, That the consul shall forthwith register in duplicate every marriage solemnized as aforesaid in two marriage register books to be furnished to him for that purpose from time to time by the Registrar General (through one of her Majesty's principal Secretaries of State), according to the form provided for the registration of marriages by an Act of the seventh year of the reign of King William the Fourth, intituled "An Act for registering Births, Deaths, and Marriages in England," or as near to such form as the difference of the circumstances will admit of; and the entry in each such book of every such marriage shall be signed by the person by whom the marriage shall have been solemnized, if there shall be any such person other than the consul, and by the consul and both the parties married, and attested by two witnesses; and all such entries shall be made in regular order from the beginning to the end of each such book, and the number of the place of entry in each duplicate marriage book shall be the same.

Consul to register marriages in duplicate in books to be sent by the Registrar General through the Secretary of State.

12. And be it enacted, That in the month of January in every year every consul shall make and transmit to one of her Majesty's principal Secretaries of State, to be transmitted by him to the Registrar General, a true copy, certified by such consul under his hand and consular seal, according to the form in the schedule (B.) to this Act annexed, of all the entries of marriages during the preceding year in the register book kept by him; and if there shall have been no marriage registered during such preceding year, the consul shall certify such fact under his hand and consular seal; and the consul shall keep the said duplicate marriage register books safely until the same shall be filled, and one of such duplicate mar-

Copies of the marriage register book to be forwarded yearly to the Secretary of State.

solemnized until the consul shall have examined into the matter of the caveat, and shall be satisfied that it ought not to obstruct the solemnization of the said marriage, or until the caveat shall be withdrawn by the party who entered the same; and in cases of doubt it shall be lawful for the consul to transmit to one of her Majesty's principal Secretaries of State a copy of such caveat, with such statement in relation thereto as such consul may think fit, and such Secretary of State shall refer the same to the Registrar General of births, deaths, and marriages in England for his decision; and the said Registrar General, having decided thereon, shall transmit his decision in writing to the said Secretary of State, who shall communicate the same to the said consul: Provided always that in case the consul refuse to solemnize or to allow to be solemnized in his presence the marriage of any person requiring such marriage to be solemnized, such person shall have a right of appeal to one of her Majesty's principal Secretaries of State, who shall thereupon either confirm the refusal or direct the solemnization of the marriage.

When marriage not solemnized within three months a new notice required.

8. And be it enacted, That whenever any marriage shall not be had within three calendar months next after notice shall have been so given to and entered by the consul as aforesaid, or where, in the case of any such caveat as aforesaid, a statement shall have been transmitted as aforesaid, or where, on such refusal as aforesaid of the consul, a person shall appeal as aforesaid, and the marriage shall be directed to be solemnized, then, within three calendar months after the receipt from the Secretary of State of the decision with respect to such caveat or on such appeal, the notice shall be void; and the marriage in respect of which such notice was given shall not be solemnized until a new notice shall have been given, and copies thereof entered in the register, and suspended in the office of the consulate, in accordance with the provisions of this Act.

After seven days by licence, or twenty-one days without licence, marriages may be solemnized at the British Consulate, by or in the presence of the consul and two witnesses.

9. And be it enacted, That after the expiration of seven days if the marriage is by licence, or of twenty-one days if the marriage is without licence, after notice shall have been so given to and entered by the consul as aforesaid, provided no lawful impediment be shown to the satisfaction of the consul why the marriage should not be solemnized, and that the marriage has not been forbidden in manner herein provided, it shall be lawful for the consul to solemnize, or allow to be solemnized by any other person in his presence, the marriage in respect of which such notice shall have been given, between and by the parties described in such notice; and every such marriage shall be solemnized at the British Consulate, with open doors, between the hours of eight and twelve in the forenoon, in the presence of two or more witnesses, and may be solemnized in the presence of the consul, according to the rites of the United Church of England and

in either form and ceremony as the  
to adopt, or may, where the  
solemnized by the consul; and in  
such marriage not solemnized  
the United Church of England and  
the ceremony, and in the pre-  
witnesses, each of the parties shall

That I know not of any lawful  
may not be joined in matrimony to

es shall say to the other,  
persons here present to witness, That I  
to be my lawful wedded wife [or

That the consul shall be entitled,  
which shall be solemnized under this Act  
to have from the parties married  
shillings, if the marriage shall be by  
the sum of ten shillings.

That the consul shall forthwith  
every marriage solemnized as aforesaid  
register books to be furnished to him for  
time to time by the Registrar General  
Majesty's principal Secretaries of State),  
form provided for the registration of mar-  
of the seventh year of the reign of King  
th, intituled "An Act for registering Births,  
riages in England," or as near to such form  
of the circumstances will admit of; and the  
each book of every such marriage shall be  
person by whom the marriage shall have been  
there shall be any such person other than the  
by the consul and both the parties married, and  
two witnesses; and all such entries shall be made  
order from the beginning to the end of each such  
the number of the place of entry in each duplicate  
book shall be the same.

It be it enacted, That in the month of January in  
every consul shall make and transmit to one of  
Majesty's principal Secretaries of State, to be transmitted  
to the Registrar General, a true copy, certified by  
consul under his hand and consular seal, according to  
form in the schedule (B.) to this Act annexed, of all the  
of marriages during the preceding year in the register  
kept by him; and if there shall have been no marriage  
during such preceding year, the consul shall certify  
fact under his hand and consular seal; and the consul  
duplicate marriage register books safely  
filled, and one duplicate mar-

Marriage  
fees to the  
consul.

Consul to  
register  
marriages in  
duplicate in  
books to be  
sent by the  
Registrar  
General  
through the  
Secretary of  
State.

Copies of the  
marriage  
register  
book to be  
forwarded  
yearly to the  
Secretary of  
State.

- riage register books when filled, shall be transmitted to one of her Majesty's principal Secretaries of State, to be transmitted by him to the Registrar General.
- Proof of residence of parties or consent not necessary to establish marriage. 13. And be it enacted, That after any marriage shall have been solemnized under this Act it shall not be necessary, in support of such marriage, to give any proof of the actual dwelling for the time required by this Act of either of the parties, previous to the marriage, within the district wherein such marriage was solemnized, or of the consent of any person whose consent thereto is required by law, nor shall any evidence to prove the contrary be given in any suit touching the validity of such marriage.
- Consul may ask certain particulars of parties. 14. And be it enacted, That it shall be lawful for the consul by whom or in whose presence any marriage is solemnized under this Act to ask of the parties to be married the several particulars required to be registered touching such marriage.
- In case of fraudulent marriage, the guilty party to forfeit all property accruing from the marriage, as in 4 G. 4, c. 76. 15. And be it enacted, That if any marriage shall be had under the provisions of this Act by means of any wilfully false notice, oath, affirmation, or declaration made by either party to such marriage, as to any matter to which a notice, oath, affirmation, or declaration is by this Act required, it shall be lawful for her Majesty's attorney general or solicitor general to sue for the forfeiture of all estate and interest in any property accruing to the offending party by such marriage; and the proceedings thereupon, and the consequences thereof, shall be the same as are provided by law in the like case with regard to marriages solemnized by licence in England according to the rites of the Church of England.
- Persons taking false oaths, &c., guilty of perjury. 16. And be it enacted, That every person who shall knowingly and wilfully make any oath, affirmation, or declaration, or sign any false notice, required by this Act, for the purpose of procuring any marriage, and every person who shall forbid any such marriage by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalties of perjury; and such offender may be tried in any county or place in England in the same manner and may be dealt with in all respects as if the offence had been committed in such county or place in England.
- The certificate of consul to be evidence. 17. And be it enacted, That in any and every action or suit for forfeiture, and upon any and every prosecution for perjury, as aforesaid, the declaration and certificate of the consul, under his hand and consular seal, shall be received and taken as good and valid evidence in the law of all facts and matters stated in such declaration and certificate, without its being necessary for the said consul to attend in person to prove the same.
- Provisions of Registra- 18. And be it enacted, That this Act shall be taken to be part of the said Act for registering births, deaths, and mar-

riages in England, as fully and effectually as if incorporated therewith; and that every consul shall be deemed a registrar under the said Act; and that all the provisions and penalties of the said Act relating to any registrar, or register of marriages or certified copies thereof, shall be taken to extend to every such consul, and the registers of marriages under this Act, and to the certified copies thereof, so far as the same are applicable thereto.

tion Act  
extended to  
this Act.

19. And be it enacted, That every British consul-general and consul already appointed or hereafter to be appointed to reside in any foreign country or place, who shall be directed or authorized, by writing under the hand of one of her Majesty's principal Secretaries of State, to solemnize and register marriages, and any person duly authorized to act in the absence of such consul, or, in any foreign place where there is no British consul resident, any vice-consul or consular agent who shall be directed or authorized as aforesaid, by one of her Majesty's principal Secretaries of State to solemnize and register marriages in such place, shall in the country or place in which he is so appointed to reside, or in which he is directed or authorized to solemnize and register marriages as aforesaid, be a consul duly authorized for all the purposes of this Act; and in the construction of this Act the term "consul" shall (save where such construction would be inconsistent with the context) be construed to mean a consul so authorized (a); and the district of every such consul for the purposes of this Act shall be all or such parts of the foreign country in which (or at a place within which) such consul is appointed to reside, or is so directed or authorized as aforesaid, as such Secretary of State may, by such writing under his hand, direct, or, where there shall be no direction in this behalf, shall be the district of the consulate of such consul.

Consuls may  
be autho-  
rized by  
Secretary of  
State to  
solemnize  
marriages.

20. And whereas many marriages have been entered into abroad by British subjects under circumstances which may occasion doubts as to the validity of such marriages, and it is expedient that such marriages should be confirmed in the cases hereinafter mentioned: Be it enacted, That all marriages, both or one of the parties being subjects or a subject of this realm, which, before the passing of this Act, have been solemnized in any foreign country or place, or on board a British vessel of war on any foreign station, by a minister in holy orders according to the rites and ceremonies of the Church of England, or of Ireland, or of the United Church of England and Ireland, or by an ordained minister of the Church of Scotland; and all marriages of the like parties which have been solemnized according to any religious rites or ceremonies or contracted per verba de presenti in any

Certain past  
marriages  
confirmed.

(a) See 31 & 32 Vict. c. 61.

foreign country or place in the presence of any British ambassador, minister, chargé d'affaires, consul-general, consul or vice-consul exercising his functions within the foreign country or place in which such marriages have been had, or on board a British vessel of war on any foreign station in the presence of the officer commanding such vessel; and all marriages of the like parties which have been solemnized according to any religious rites or ceremonies, or contracted per verba de presenti in any foreign country or place, and registered by or under the authority of any British consul-general, consul, or vice-consul exercising his functions within such foreign country or place, the signatures of the parties being written in the register, shall be deemed and held to be as valid in the law and cognizable in the like manner as if the same had been solemnized within her Majesty's dominions with a due observance of all forms required by law: Provided always, that this enactment shall not extend to render valid any marriage which before the passing of this Act has been declared invalid by any court of competent jurisdiction in any proceeding touching such marriage, or any right dependent on the validity or invalidity thereof, or any marriage where either of the parties has afterwards, during the life of the other, lawfully intermarried with any other person.

Extent of  
Act.

21. Provided always and be it enacted, That nothing in this Act contained shall confirm or impair or in anywise affect, or be construed to confirm or impair or in anywise affect, the validity in law of any marriage solemnized beyond the seas, otherwise than as herein provided; and this Act shall not extend to the marriage of any of the royal family.

Act may be  
amended,  
&c.

22. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present session of Parliament.

## SCHEDULES.

**SCHEDULE (A.)**

## NOTICE OF MARRIAGE.

To the [British Consul-General or Consul] at  
I hereby give you notice, that a marriage is intended to  
be had within three calendar months from the date hereof  
between me and the other party herein named and described ;  
(that is to say,)

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.
<i>John Brown</i>	<i>Widower</i>	— —	<i>Of full Age.</i>	—	—
<i>Elizabeth Reeve</i>	<i>Spinster</i>	— —	<i>Minor.</i>	—	—

[illegible]

**SCHEDULE (B.)**

I, [Consul-General or Consul] residing at \_\_\_\_\_ do hereby certify, That this is a true copy of the entries of marriages registered in my office, from the entry of the marriage of John Brown and Elizabeth Reeve, number one, to the entry of the marriage of Michael Jones and Maria Tomkins, number fourteen.

Witness my hand and seal, this                      day of January,  
1850.

(Signature and Consular Seal  
of the Consul-General or Consul.)



## ACT FOR CERTIFYING PLACES OF WORSHIP.

18 &amp; 19 VICT. c. 81.

*An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England.*

[30th July, 1855.]

1 W. & M.  
Sess. 1.  
c. 18.  
52 Geo. 3,  
c. 155.

31 Geo. 3,  
c. 32.

2 & 3 W. 4,  
c. 115.  
9 & 10 Vict.  
c. 59.

15 & 16  
Vict. c. 36.

WHEREAS by an Act of the first session of the first year of King William and Queen Mary, chapter eighteen, and an Act of the fifty-second year of King George the Third, chapter one hundred and fifty-five, places of meeting of congregations or assemblies for religious worship of Protestants (save as therein excepted with respect to places of worship of the Established Church and otherwise) were required to be certified to the bishop's or archdeacon's court, or to the general or quarter sessions of the peace, and to be registered in such court, and recorded at such sessions: And whereas by an Act of the thirty-first year of King George the Third, chapter thirty-two, every place of congregation or assembly for religious worship of persons professing the Roman Catholic religion is required to be certified to and recorded at the general or quarter sessions of the peace: And whereas by the two following Acts respectively, that is to say, an Act of the session holden in the second and third years of King William the Fourth, chapter one hundred and fifteen, and an Act of the session holden in the ninth and tenth years of her Majesty, chapter fifty-nine, her Majesty's subjects professing the Roman Catholic religion, and her Majesty's subjects professing the Jewish religion, in respect of their places for religious worship, are made subject to the same laws as Protestant Dissenters: And whereas by an Act passed in the session holden in the fifteenth and sixteenth years of her Majesty, chapter thirty-six, places of meeting of congregations or assemblies for religious worship of Protestant Dissenters are required to be certified to the Registrar General of births, deaths, and marriages in England, and to be recorded in the general register office, in lieu of being certified to and registered and recorded in the bishop's or archdeacon's court, and at the general or quarter sessions, as hereinbefore mentioned: And whereas it is expedient that all places of religious worship, not being churches or chapels of the Established Church, should, if the congregation should desire, but not otherwise, be certified to the said Registrar General: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, shall be repealed: Provided always, that the certifying thereunder before the passing of this Act of any place of meeting for religious worship shall, subject to the provisions hereinafter contained, have the same force and effect from the time of such certifying as if the same had been duly certified, registered, and recorded as before the passing of the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, was required by law, and such Act and this Act had not been passed.

15 & 16  
Vict. c. 36,  
repealed,  
but places  
of worship  
certified  
thereunder  
to have  
force, &c.

2. Every place of meeting for religious worship of Protestant Dissenters or other Protestants, and of persons professing the Roman Catholic religion, by the said Acts of King William and Queen Mary, the thirty-first and fifty-second years of King George the Third, and the fifteenth and sixteenth years of her Majesty, chapter thirty-six, or any of them, required to be certified and registered or recorded, as therein mentioned, and not heretofore certified and registered or recorded in manner required by law, and every place of meeting for religious worship of persons professing the Jewish religion, not heretofore certified and registered or recorded as aforesaid, and every place of meeting for religious worship of any other body or denomination of persons, may be certified in writing to the Registrar General of births, deaths, and marriages in England, through the superintendent registrar of births, deaths, and marriages of the district in which such place may be situate; and such certificate shall be in duplicate, and upon forms in accordance with schedule A. to this Act, or to the like effect, such forms to be provided by the said Registrar General, and to be obtained (without payment) upon application to such superintendent registrar as aforesaid; and the said superintendent registrar shall, upon the receipt of such certificate in duplicate, forthwith transmit the same to the said Registrar General, who, after having caused the place of meeting therein mentioned to be recorded as hereinafter directed, shall return one of the said certificates to the said superintendent registrar, to be redelivered by him to the certifying party, and shall keep the other certificate with the records of the General Register Office.

Places of  
worship to  
be certi-  
fied to  
Registrar  
General.

3. The said Registrar General shall cause all places of meeting for religious worship certified to him under this Act to be recorded in a book to be kept by him for that purpose at the General Register Office, and no such place of meeting as aforesaid shall be certified to or registered in any court of any bishop or archdeacon, or be certified to or recorded at any General or Quarter Sessions; and the certifying to the said Registrar General of any such place of meeting for religious worship of Protestant Dissenters or other Protestants

Places of  
meeting to  
be recorded.

or Roman Catholics, or persons professing the Jewish religion, and of any place of meeting for religious worship of any other body or denomination of persons, shall, subject to the provisions herein contained, have the same force and effect as if such place had been duly certified and recorded, or registered and recorded, as before the passing of the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, was required by law, and such Act and this Act had not been passed.

Places of meeting already certified save those certified under 15 & 16 Vict. c. 6, may be certified to Registrar General, and be recorded by him.

Fee of 2s. 6d. to be paid with certificate to superintendent registrar.

Notice to be given to Registrar General of every place of meeting becoming disused for the purposes for which it was certified.

4. Any place of meeting for religious worship heretofore certified and registered or recorded in manner required by law, and which continues to be used for religious worship, save any such place of meeting certified to the said Registrar General under the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, may, at any time after the passing of this Act be certified in writing to such Registrar General through the superintendent registrar of the district in which such place may be situate, and shall be recorded by such Registrar General in manner hereinbefore mentioned concerning places of meeting not heretofore certified and registered or recorded.

5. Upon the delivery of every certificate to the superintendent registrar for transmission to the Registrar General for the purpose of being recorded under this Act, the person delivering the same shall pay to such superintendent registrar for his own use the sum of two shillings and sixpence, and it shall not be lawful to demand or take any greater fee or reward for the same respectively.

6. Whenever any place of meeting for religious worship which may have been certified under the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, or this Act, shall have wholly ceased to be used as a place of meeting for religious worship, the person or one of the persons who so certified or last certified the same (as the case may be), or the trustee or one of the trustees for the time being of such place of meeting, or the owner or occupier or one of the owners or occupiers thereof, shall, if then resident within the superintendent registrar's district within which such place shall be situate, forthwith give notice to the Registrar General through such superintendent registrar that such place has so ceased to be used as a place of meeting for religious worship, such notice to be in a form in accordance with the schedule B. to this Act, or to the like effect, and which form shall be provided by the said Registrar General, and may be obtained (without payment) upon application to the said superintendent registrar; and the person giving such notice shall sign the same in the presence of such superintendent registrar or of his deputy, who shall forthwith transmit the same through the general post to the Registrar General at the General Register Office.

7. The said Registrar General shall, in the year one thousand eight hundred and fifty-six, and also at such subsequent periods as one of her Majesty's principal Secretaries of State shall from time to time in that behalf order or direct, make out and cause to be printed a list of all places of meeting which have been certified to and recorded by him under the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, or this Act, and the record of which has not been cancelled as hereinafter provided, and shall state in such list the county and superintendent registrar's district within which each of such places of meeting is situated, and the religious denomination to which the persons for the time being certifying it belong, and shall cause a copy of such list to be sent to every superintendent registrar of births, deaths, and marriages in England, and such list shall be open at all reasonable times to all persons desirous of inspecting the same, on payment to such superintendent registrar of a fee of one shilling.

List of certified places to be printed.

8. Whenever it shall appear to the satisfaction of the said Registrar General, from any notice which shall have been given to him as aforesaid or otherwise, that any certified place of meeting for religious worship has wholly ceased to be used as such, the said Registrar General shall cause the record of such certification to be cancelled, and shall give public notice of the cancellation thereof by advertisement in some newspaper circulating within the district in which such place of meeting is situated, and in the *London Gazette*, and shall also expunge the name of such place from the list of certified places so to be printed by him as aforesaid; and after such cancellation and publication thereof as aforesaid such place shall cease to be deemed duly certified as by law required, and shall so remain until it shall have been duly certified afresh under this Act.

Direction to the Registrar General to cancel records of certificates of places of worship ceasing to be used as such.

9. Every place of meeting for religious worship certified to the said Registrar General under the said Act of the fifteenth and sixteenth years of her Majesty, chapter thirty-six, or this Act, and recorded by him as aforesaid, so long as the same continues to be *bond fide* used as a place of religious worship, and the record of the certification thereof has not been cancelled as hereinbefore is provided, shall be wholly freed and exempted from the operation of an Act passed in the session holden in the sixteenth and seventeenth years of her Majesty, chapter one hundred and thirty-seven, intitled "*The Charitable Trusts Act, 1853*," and shall not be subject or liable to any of the provisions of the same Act, save that the exempted charities may avail themselves of the sixty-third and sixty-fourth sections of the said Act, if they shall think fit (a).

Certified places exempted from the operation of "*The Charitable Trusts Act, 1853*."

(a) The sections referred to are as follow, the trusts upon which

Nothing to  
affect  
churches,  
&c., of  
Established  
Church.

Certificate  
of place  
having  
been certi-  
fied to be  
given.

10. Nothing in this Act shall affect or be construed to affect the churches or chapels of the United Church of England and Ireland, or the celebration of divine service according to the rites and ceremonies of the said United Church by ministers of such Church, in any place hitherto used for such purpose, or being now or hereafter duly consecrated or licensed by any archbishop or bishop or other person lawfully authorized to consecrate or license the same.

11. The Registrar General, on payment to him of a fee of two shillings and sixpence, shall, with respect to any place certified to him as a place of meeting for religious worship, the record whereof remains uncanceled, give to any person demanding the same a certificate, sealed or stamped with the seal of the general register office, that at the time or respective times in such certificate in that behalf stated the place therein described was duly certified and duly recorded as required by this Act, and that at the date of such sealed or stamped certificate the record of such certification remained uncanceled; and every such sealed or stamped certificate, if tendered in evidence upon any trial or other judicial proceeding in any civil or criminal court, shall be received as evidence of the said several facts therein mentioned, without any further or other proof of the same.

12. [Sums received by or on account of Registrar General to be accounted for, and expenses defrayed as other expenses of the General Register Office.]

places of religious worship are held being on the footing of charities :  
"63. It shall be lawful for any of the charities exempted from the operation of this Act [16 & 17 Vict. c. 137] by order or resolution duly made, in conformity with the constitution or rules of such charity (and which in that case only shall be binding), to apply by petition to the commissioners to have the benefit of this Act either generally or as to any of the provisions herein contained; and such petition shall be under the seal of such charity if incorporated, and if not, then under the hands of the major part of the trustees and governing body of such charity; and in such case it shall be lawful for the commissioners, if they shall think fit, to make an order in conformity with such application, and such charity shall thenceforth be entitled to and be bound by all the provisions of this Act, if admitted generally thereto, or by such of the enactments thereof as shall be mentioned and specified in such order of the commissioners; but in either case, in the same manner as if such charity had not been exempted from this Act, or such exemption had not extended to the enactments specified in such order."

"64. Provided also, that if any question or dispute shall arise among the members of any charity exempted from the operation of this Act in relation to any office, or the fitness or disqualification of any trustee or officer or his election or removal, or generally in relation to the management of the charity, it shall be lawful for two-thirds of the members present at any special meeting duly convened by notice for the purpose, in the same manner in which meetings of such charity are by the rules thereof appointed to be held and convened, to refer such question or dispute to the arbitration of the commissioners, who shall accept such reference and act therein as arbitrators, and their award shall be final, and may be made a rule of her Majesty's High Court of Chancery."

13. Notwithstanding the provisions of this or any other Act, all marriages which heretofore have been had or solemnized in any building which has been registered for the solemnization of marriages pursuant to the provisions of an Act passed in the sixth and seventh years of his late Majesty King William the Fourth, chapter eighty-five, but which may not have been certified as required by the provisions of this or any other Act, shall be as valid in all respects as if such place of worship had been so certified.

To remove doubts as to validity of marriage.

14. This Act shall not extend to Scotland or Ireland.

Extent of Act.

### Schedules referred to in the foregoing Act.

#### SCHEDULE A.

*To the Registrar General of Births, Deaths, and Marriages in England.*

I the undersigned (a) of in the County of do hereby, and under and by virtue of an Act passed in the year of her Majesty Queen Victoria, intituled "An Act to Amend the Law concerning the certifying and registering of places of religious worship in England," certify that a certain building known by the name of situated at in the County of within the Superintendent Registrar's district of [was used (b) as a place of meeting for religious worship before the 30th day of June 1852 and] is intended to be used as heretofore (c), and will accordingly be forthwith used as a place of meeting for religious worship by a congregation or assembly of persons calling themselves (d) and I request that this certificate may be recorded in the

(a) Here insert the name, residence, and county in which it is situate, and the rank or profession of the party certifying.

(b) If the place was not so used before 30th June, 1852, expunge this and the following line.

(c) If the building has not been previously used as a place of worship, erase the words "as heretofore."

(d) Here insert, "Protestant Dissenters," "Independents," "Particular Baptists," "Wesleyan Methodists," "Roman Catholics," "Jews," or other religious denomination of or religious appellation adopted by the persons on whose behalf the building is certified: but if those persons decline to describe themselves by any distinctive appellation, erase the words "calling themselves," and insert "who object to be designated by any distinctive religious appellation."

18 & 19  
Vict. c. 81.

General Register Office, pursuant to the said Act. Dated  
this            day of            185 .  
(Signature of the party certifying.)  
(a)  
of the place of meeting above described.

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#### SCHEDULE B.

##### *To the Registrar General of Births, Deaths, and Marriages in England.*

I, the undersigned            of            in the county of  
being the person or one of the persons who certified  
or last certified [or being "the trustee," or "one of the  
trustees," or the "owner," or "occupier," or "one of the  
owners or occupiers" (as the case may be), of] a certain building  
known by the name of            [or a certain dwelling  
house, &c. (as the case may be)] situate at            in the  
county of            within the superintendent registrar's district  
of            [and being now resident within the same  
district], do hereby declare and give you notice in pursuance  
of an Act passed in the            year of her present Majesty,  
chapter            that the aforesaid building [or dwelling  
house, &c.] which was on the            day of            185  
recorded by you as a place of meeting for religious worship  
by a congregation or assembly of persons calling themselves  
[or by a congregation or assembly of Roman  
Catholics, or of persons belonging to the Society of Friends,  
or of persons professing the Jewish religion (as the case may  
be)], has wholly ceased to be used as a place for public religious  
worship.  
Witness my hand, this            day of            185 .

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#### LORD BROUGHAM'S ACT.

19 & 20 VICT. CC. 96.

##### *An Act for amending the Law of Marriage in Scotland.* [29 July, 1856.]

WHEREAS it is expedient to amend the law touching marriages in Scotland: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this

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(a) Insert on this line immediately under the signature the word "minister," "proprietor," "a trustee," "occupier," "an attendant," or such other words as will clearly show the connection subsisting between the person certifying and the place of meeting.

present Parliament assembled, and by the authority of the same, as follows :

1. After the thirty-first day of December, one thousand eight hundred and fifty-six, no irregular marriage contracted in Scotland by declaration, acknowledgment, or ceremony shall be valid, unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage; any law, custom, or usage to the contrary notwithstanding.

2. If any persons who shall have contracted an irregular marriage in Scotland after the day and year aforesaid shall within three months thereafter present a joint application for a warrant to register such marriage to the sheriff or sheriff substitute of the county where such marriage was contracted, and shall prove to his satisfaction that they have been married to one another, and that one of them had lived in Scotland for twenty-one days next preceding such marriage, or had his or her usual residence in Scotland at the date thereof, such sheriff or sheriff substitute shall certify the same under his hand; and shall thereupon grant warrant to the registrar of the parish or burgh in which the marriage was contracted, who shall forthwith enter such marriage in the register of marriages kept by him, in terms of an Act of the seventeenth and eighteenth years of her present Majesty, chapter eighty; and any certified copy of such entry, signed by such registrar, and which such registrar is hereby required and empowered to give, charging for the same the sum of five shillings, shall be received in evidence of such marriage, and of such residence or of such previous living twenty-one days in Scotland, in all courts in the United Kingdom and Dominions thereunto belonging.

3. It shall not be lawful, after the date aforesaid, to convict any parties of having irregularly contracted marriage, unless there shall be adduced to the justice or justices of the peace, magistrate or magistrates, before whom the complaint against such parties has been brought, sufficient proof, other than the acknowledgment of such parties, that one of them had at the date thereof his or her usual residence in Scotland, or had lived in Scotland for twenty-one days next preceding such marriage; nor shall it be lawful for any registrar of births, deaths, and marriages in Scotland, to register any marriage under the provisions of the said recited Act, on the production of an extract of a conviction for having irregularly contracted marriage, unless such conviction shall bear such sufficient proof as aforesaid was so adduced.

Declaring under what circumstances marriages solemnized in Scotland shall be valid.

Certificated copy of entry by sheriff depute that parties were married, and that one of them lived in Scotland twenty-one days preceding such marriage, conclusive as to its validity.

No conviction for, nor registration of irregular marriage, without proof of previous residence.



## MARRIAGES ACT, 1856.

19 &amp; 20 VICT. c. 119.

*An Act to amend the Provisions of the Marriage and Registration Acts.* [29th July, 1856.]

6 & 7 W. 4,  
c. 35.  
1 Vict. c. 22.  
3 & 4 Vict.  
c. 72.

WHEREAS an Act was passed in the session holden in the sixth and seventh years of the reign of King William the Fourth, chapter eighty-five, intituled "An Act for Marriages in England;" and another Act was passed in the first year of the reign of her Majesty, chapter twenty-two, intituled "An Act to explain and amend two Acts, passed in the last session of Parliament, for Marriages, and for registering Births, Deaths, and Marriages, in England;" and another Act was passed in the session holden in the third and fourth years of her Majesty, chapter seventy-two, intituled "An Act to provide for the Solemnization of Marriages in the district in or near to which the parties reside:" And whereas it is expedient to alter and amend the provisions of the said recited Acts, so far as is hereinafter provided: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

No notice of marriage to be read or published before poor law guardians, or be transmitted to the clerk of such guardians.

Every notice of marriage to be accompanied by a solemn declaration, by one of the parties, that there is no lawful hindrance to such marriage, &c.

1. In case of any party intending marriage under the provisions of any of the said recited Acts or of this Act, no notice of such intended marriage shall be read or published before the guardians of any poor law union or parish or place, or be transmitted by any superintendent registrar to the clerk of any such guardians.

2. In case any party shall intend marriage, under the provisions of any of the said recited Acts or of this Act, the party so intending marriage shall, at the time of giving to the superintendent registrar or respective superintendent registrars, as the case may be, the notice required by the said recited Acts or either of them, make and sign or subscribe a solemn declaration in writing, in the body or at the foot of such notice, that he or she believes that there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that the parties to the said marriage, in case the marriage is intended to be had without licence, have, for the space of seven days immediately preceding the giving of such notice, had their usual place of abode and residence within the district of the superintendent registrar or respective superintendent registrars to whom such notice or notices, as the case may be, shall be so given; or, in case such marriage is intended to be had by licence, that one of the said parties hath for the space of fifteen days immediately preceding the giving of such notice had his or her

usual place of abode and residence within the district of the superintendent registrar to whom such notice shall be so given; and when either of the parties intending marriage, and not being a widower or widow, shall be under the age of twenty-one years, the party making such declaration shall further declare that the consent of the person or persons whose consent to such marriage is by law required has been given, or (as the case may be) that there is no person whose consent to such marriage is by law required; and every declaration so made as aforesaid shall be signed and subscribed, by the party making the same, in the presence of the superintendent registrar to whom the notice of marriage containing such declaration is given, or in the presence of his deputy, or of some registrar of births and deaths, or of marriages, for the district in which the party giving such notice resides, or of the deputy of such registrar, who shall respectively attest the same by adding thereto his name, description, and place of abode; and no certificate or licence for marriage shall be issued or granted pursuant to any such notice as aforesaid unless the said notice be accompanied by such solemn declaration duly made and signed or subscribed and attested as aforesaid; and every person who shall knowingly or wilfully make and sign or subscribe any false declaration, or who shall sign any false notice for the purpose of procuring any marriage under the provisions of any of the said recited Acts or this Act, shall suffer the penalties of perjury.

Persons wilfully making false declaration to suffer the penalties of perjury.

3. Every notice of marriage which shall be given under the provisions of any of the said recited Acts or of this Act, after this Act shall have come into operation, shall be in the form of Schedule A. to this Act annexed, or to the like effect; and in every case where the marriage is intended to be had and solemnized under the provisions of the said recited Act of the third and fourth years of her Majesty, chapter seventy-two, such notice shall, in addition to the several particulars comprised in the said schedule, contain the declaration required to be made by one of the parties to such intended marriage, pursuant to the second section of the said last-mentioned Act; and the superintendent registrar to whom any such notice of marriage shall be so given shall forthwith enter the particulars, and the date thereof, and the name of the party giving the same, into the marriage notice book: and for every such entry the superintendent registrar shall be entitled to have a fee of one shilling.

Form of notice of marriage.

4. In case any party shall intend marriage without licence under the provisions of any of the said recited Acts or of this Act, the superintendent registrar to whom notice of such intended marriage has been given shall cause the notice of marriage, or a true and exact copy thereof, as entered in the marriage notice book, under the hand of such superintendent

Notice of marriage without licence to be affixed in superintendent

registrar's  
office.

registrar, to be suspended or affixed in some conspicuous place in the office of the said superintendent registrar during twenty-one successive days next after the day of the entry of such notice in his "Marriage Notice Book," before any marriage shall be solemnized in pursuance of such notice (a), and after the expiration of twenty-one days next after the day of the entry of such notice in his "Marriage Notice Book" the superintendent registrar shall issue under his hand, upon the request of the party giving such notice, a certificate in the form or to the effect of the certificate set forth in Schedule B. to this Act annexed, provided that in the meantime no lawful impediment to the issuing of such certificate be shown to the satisfaction of the same superintendent registrar, and provided the issue of such certificate shall not have been forbidden in the manner provided by either of the said firstly and secondly recited Acts by some person or persons authorized in that behalf; and every such certificate shall state the particulars set forth in the said notice, and the day on which the same notice was entered, and that the issue of such certificate has not been forbidden by any person or persons authorized in that behalf; and for every such certificate the superintendent registrar shall be entitled to have and receive a fee of one shilling; and at any time within three calendar months next after the day of the entry of such notice the intended marriage may be solemnized under the authority of the said certificate; and every superintendent registrar's certificate for marriage duly issued under the provisions of this Act shall have the same force, validity, and effect as the like certificate issued under the provisions of the said recited Acts or either of them would have had in case this Act had not been passed.

Notice of  
marriage by  
licence not  
to be sus-  
pended in  
the office of  
superin-  
tendent  
registrar.

In case of  
marriage  
by licence,  
notice to  
be given to  
the super-

5. In case any party shall intend marriage by licence under the provisions of any of the said recited Acts or of this Act, notice of such intended marriage shall not be suspended in the office of the superintendent registrar, but the party giving the same shall state therein that such marriage is intended to be celebrated by licence (b).

6. In any case of marriage intended to be solemnized by licence, under the provisions of either of the said two firstly-recited Acts or of this Act, between parties both of whom do not dwell in the same superintendent registrar's district, it shall not be required that notice of such intended marriage shall be given to more than one superintendent registrar, but

(a) This suspension of the original notice, or a copy of it, has no reference to notice of marriage by licence, as to which see section 5.

(b) The notice in the case of marriage by licence will merely have to be entered in the Marriage Notice Book to await the application for the licence.

a notice to the superintendent registrar of the district in which one of the parties so intending marriage resides shall be sufficient; and it shall not be required that the said notice shall state how long each of the said parties has resided in his or her dwelling place, but only how long the party residing in the district in which the notice is given has so resided.

intendent  
registrar of  
one district,  
which shall  
be sufficient.

7. In every case in which one of the parties intending marriage without licence, under the provisions of any of the said recited acts or of this act, shall dwell in Ireland, the party so dwelling in Ireland shall give notice in the form there used in that behalf or to the like effect to the registrar of the district in Ireland within which such party shall have dwelt for not less than seven days then next preceding, and shall state therein the name and surname and the profession and condition and age of each of the parties intending marriage, and also the dwelling place of each of them, and the time, not being less than seven days, during which he or she shall have dwelt therein, and also the church or other building in which the marriage is to be solemnized, provided that if either party shall have dwelt in the place stated in the notice as his or her dwelling place more than one month it may be stated that he or she hath dwelt therein one month and upwards; and such notice shall be dealt with in the manner and such certificate for marriage shall be given by such registrar in the mode respectively prescribed in an Act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter eighty-one, intituled "An Act for Marriages in Ireland, and for registering such Marriages," as amended by another Act passed in the session holden in the ninth and tenth years of the same reign, chapter seventy-two, intituled "An Act to amend the Act for Marriages in Ireland, and for registering such Marriages," provided that in such case the certificate for marriage shall not be issued before the expiration of twenty-one days next after the day of the entry of such notice, as in the first of the said two last-mentioned Acts is provided; and from and after the issuing of such certificate the production of the same to any person duly authorized under the provisions of this Act to solemnize a marriage shall be as valid and effectual for authorizing such person to solemnize such marriage, as the production of a certificate for marriage of a superintendent registrar of a district in England would be under any or either of the said three firstly herein-before recited Acts, if the party giving such notice were resident within such district, and the other party to such intended marriage were also resident within another superintendent registrar's district in England; and where marriages have, since the passing of the said Act for marriages in Ireland, and for registering such marriages, been solemnized for England between parties, one of whom was resident in Ireland, under certificates, of which one was the

Notice of  
marriage  
without  
licence  
may be  
given in  
Ireland, if  
one of the  
parties re-  
side there.

Certificate of proclamation of banns in Scotland as to party resident there equivalent to superintendent registrar's certificate.

In cases of marriage by licence, certificate of the notice thereof may be given by the superintendent registrar (unless the marriage be forbidden), and thereupon the marriage may be solemnized.

certificate of the district in Ireland, within which one of the parties had dwelt for not less than seven days, and the other the certificate of the superintendent registrar of the district in England within which the other party had dwelt for not less than seven days, such marriages are hereby declared to be and to have been valid in the same manner as if the parties had been respectively resident for not less than seven days in the respective districts of two superintendent registrars in England, and like certificates had been issued by both such superintendent registrars (a).

8. In every case in which one of the parties intending marriage without licence, under the provisions of any of the said recited Acts or this Act, shall dwell in Scotland, a certificate of proclamation of banns in Scotland under the hand of the session clerk of the parish in which such proclamation shall have been made, shall, when produced to any person duly authorized under the provisions of this Act to solemnize a marriage, be as valid and effectual for authorizing such person to solemnize such marriage as the production of a certificate for marriage of a superintendent registrar of a district in England would be, under any or either of the said three firstly recited Acts, in reference to a party resident within such district.

9. Every superintendent registrar receiving notice of an intended marriage to be solemnized by licence as aforesaid shall, after the expiration of one whole day next after the day of the entry of such notice in his Marriage Notice Book, issue under his hand, upon the request of the party giving such notice, a certificate in the form or to the effect of the certificate set forth in the said schedule (B.) to this Act annexed, and also a licence to marry, provided that in the meantime no lawful impediment to the issuing of such certificate be shown to the satisfaction of the same superintendent registrar, and provided the issue of such certificate shall not have been forbidden in the manner provided by either of the said firstly and secondly recited Acts by some person or persons authorized in that behalf; and every such certificate shall state the particulars set forth in the said notice, and the day on which the same notice was entered, and that the issue of such certificate has not been forbidden by any person or persons authorized in that behalf; and for every such certificate the superintendent registrar shall be entitled to have and receive a fee of one shilling; and at any time within three calendar months next after the day of the entry of such notice the intended marriage may be solemnized under the

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(a) This section (*mutatis mutandis*) is similar to the first section of the Irish Marriage Act, 9 & 10 Vict. c. 72, except that by that enactment marriages by licence in Ireland are referred to. See *ante*, p. 362.

authority of the said licence; and every superintendent registrar's certificate and licence for marriage duly issued under the provisions of this act shall have the same force, validity, and effect (as the like certificate and licence issued under the provisions of the said recited acts or either of them would have had in case this act had not been passed) (a).

10. The form of a licence for marriage so to be granted as aforesaid to any party or parties, by the superintendent registrar of any district as aforesaid, shall be in the form or to the effect of the licence set forth in Schedule C. to this act annexed; and for every such licence the superintendent registrar granting the same shall be entitled to have and receive of the party requiring the same the sum of one pound ten shillings, over and above the amount paid for the stamps necessary on granting such licence.

11. No such marriage as aforesaid shall be solemnized in any such registered building without the consent of the minister or of one of the trustees, owners, deacons, or managers thereof, nor in any registered building of the Church of Rome without the consent of the officiating minister thereof, nor in any church or chapel of the United Church of England and Ireland without the consent of the minister thereof, nor in such latter case by any other than a duly qualified clergyman of the said united church, or with any other forms or ceremonies than those of the said united church, any statute or statutes to the contrary notwithstanding.

12. If the parties to any marriage contracted at the registry office of any district conformably to the said recited acts or any of them, or to the provisions of this act, shall desire to add the religious ceremony ordained or used by the church or persuasion of which such parties shall be members to the marriage so contracted, it shall be competent for them to present themselves for that purpose to a clergyman or minister of the church or persuasion of which such parties shall be members, having given notice to such clergyman or minister of their intention so to do; and such clergyman or minister, upon the production of their certificate of marriage before the superintendent registrar, and upon the payment of the customary fees (if any), may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself or by some minister nominated by him, read or celebrate the marriage service of the persuasion to which such minister shall belong; provided always, that no minister of religion who is not in holy orders of the United Church of England and Ireland shall under the provisions of this act officiate in any church or chapel of the United Church

Form of  
licence for  
marriage.

Mode of  
solemnizing  
marriages in  
registered  
buildings.

Consent of  
minister,  
&c., re-  
quired.

Persons de-  
siring may  
add the  
religious  
ceremony  
ordained  
by the  
church.

(a) The grant of a licence must in every case be preceded by the issue of a certificate, the form for which, for the sake of distinction, is printed in red.

of England and Ireland; but nothing in the reading or celebration of such service shall be held to supersede or invalidate any marriage so previously contracted, nor shall such reading or celebration be entered as a marriage among the marriages in the parish register: provided also, that at no marriage solemnized at the registry office of any district shall any religious service be used at such registry office.

Superintendent registrar to whom notice is given may grant licence for marriage (under 3 & 4 Vict. c. 72), in a district in which neither of the parties resides.

13. When any marriage is intended to be solemnized between parties not of the Society of Friends commonly called Quakers, or not professing the Jewish religion, by licence under the provisions of the before-recited Act of the third and fourth years of her Majesty, chapter seventy-two, in a registered building situated in a district within which neither of the parties resides, it shall be lawful for the superintendent registrar to whom notice of such intended marriage shall have been given to grant to the party applying for the same a licence for such marriage to be solemnized in the registered building stated in such notice; and every licence and certificate granted in pursuance of this enactment shall be as valid and effectual to all intents and purposes as if the same had been granted by the superintendent registrar of the district in which the registered building wherein the marriage is intended to be solemnized is situated (a).

Superintendent registrar may grant licence for marriage to be solemnized in registered building out of the district wherein the parties reside, provided it be the usual place of worship of one of them.

14. When any marriage is intended to be solemnized under the provisions of any of the before-recited Acts or of this Act, in the usual place of worship of the parties so intending marriage, or one of them, and such place of worship shall be a registered building, situated out of the district of their, his, or her residence, it shall be lawful for the superintendent registrar or respective superintendent registrars to whom notice of such marriage shall have been given to grant to the party applying for the same a licence or certificate, as the case may be, for such marriage to be solemnized in the registered building stated in such notice, provided such building be situated not more than two miles beyond the limits of the district in which the notice of such marriage has been given, and the party giving notice of such marriage shall at the time of giving the same state therein, in addition to the description of the building in which the marriage is to be solemnized, that it is the usual place of worship of one of the parties, and shall also state the name of the party whose usual place of worship it is; and every licence and certificate granted in pursuance of this enactment shall be as valid and effectual, to all intents and purposes, as if the same had been granted by the superintendent registrar of the district in

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(a) This section is intended to remove doubts as to the power of the superintendent registrar to grant licences under 3 & 4 Vict. c. 72.

which the registered building, wherein the marriage is intended to be solemnized, is situated.

15. The Registrar General shall have power and he is hereby authorized from time to time to appoint, by writing under his hand, such person or persons as he may think fit, with such qualifications as the said Registrar General by any general rule shall have declared to be necessary, to be a registrar or registrars of marriages within the district of any superintendent registrar; and every appointment to be hereafter made by any superintendent registrar of any person or persons to be a registrar or registrars, for the purpose of being present at marriages to be solemnized under and by virtue of any or either of the said recited Acts or of this Act, shall be by writing under the hand of such superintendent registrar, and shall be subject to the approval of the Registrar General.

Registrar General may appoint registrars of marriages; and appointment of registrars of marriages by superintendent registrars to be subject to the approval of Registrar General.

16. Every registrar of marriages, already appointed, or hereafter to be appointed, shall be, and he is hereby empowered, subject to the approval of the Registrar General, to appoint, by a writing under his hand, a fit person to be and to act as his deputy, in case of the illness or unavoidable absence of such registrar; and every such deputy, while so acting, shall have all the powers and duties and be subject to all the provisions and penalties in the said recited Acts or any or either of them given, imposed, and contained concerning registrars of marriages; and every such deputy shall hold his office during the pleasure of the registrar by whom he was appointed, but shall be removable by the Registrar General; and every registrar of marriages shall be civilly responsible for the acts and omissions of his deputy; and in case any registrar of marriages shall die, or otherwise cease to hold his office, his deputy shall become the registrar of marriages in his place until the appointment of another registrar of marriages shall have been made, and notified to him by the superintendent registrar or by the Registrar General, and shall, while continuing such registrar, have the same powers and duties and be subject to the same provisions and penalties as any other registrar of marriages.

Registrar of marriages may appoint a deputy.

17. After any marriage shall have been solemnized, under the authority of any of the said recited Acts or of this Act, it shall not be necessary in support of such marriage to give any proof of the actual dwelling or of the period of dwelling of either of the parties previous to the marriage within the district stated in any notice of marriage to be that of his or her residence, or of the consent to any marriage having been given by any person whose consent thereto is required by law, or that the registered building in which any marriage may have been solemnized had been certified according to law as a place of religious worship, or that such building was the usual place of worship of either of the parties, nor shall

Proof of the observance of this Act and of the recited Acts. Matters not necessary to the validity of marriages.



Penalty on making false declaration, or giving false notices.

In case of fraudulent marriages, the guilty party to forfeit all property accruing from the marriage, as in 4 Geo. 4, c. 76.

Nothing to alter, &c. Provisions of existing Acts, except where at variance with this Act.

any evidence be given to prove the contrary in any suit or legal proceedings touching the validity of such marriage; and all marriages which heretofore have been or which hereafter may be had or solemnized, under the authority of any of the said recited Acts or of this Act, in any building or place of worship which has been registered pursuant to the provisions of the said Act passed in the sixth and seventh years of his late Majesty King William the Fourth, chapter eighty-five, but which may not have been certified as required by law, shall be as valid in all respects as if such place of worship had been so certified (a).

18. Any person who shall knowingly or wilfully make any false declaration or sign any false notice required by this Act for the purpose of procuring any marriage, and every person who shall forbid the granting by any superintendent registrar of a certificate for marriage by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalties of perjury.

19. If any valid marriage shall be had, under the provisions of any of the said recited Acts or this Act, by means of any wilfully false declaration, notice, or certificate made or obtained by either party to such marriage as to any matter in which a solemn declaration, notice, or certificate is required, it shall be lawful for her Majesty's Attorney General or Solicitor General to sue for a forfeiture of all the estate and interest in any property accruing to the offending party by such marriage, and the proceedings thereupon and the consequences thereof shall be the same as are provided in the like case with regard to marriages solemnized by licence between parties under age according to the rites of the Church of England in the statute passed in the fourth year of the reign of his late Majesty King George the Fourth, chapter seventy-six.

20. Except where the provisions of the said recited Acts are expressly altered by or are at variance with the provisions of this Act, nothing herein contained shall alter, repeal, or affect, or be construed so as in any manner to alter, repeal, or affect, any of the several provisions and clauses contained in the same Acts or any of them, but, except as aforesaid, the same provisions and clauses respectively shall be and remain in full force and effect as if this Act had not been passed: and this Act shall, except as aforesaid, be considered as incorporated with the same provisions and clauses, and be construed in connection therewith; provided that, save as hereinafter mentioned, none of the provisions of this Act shall limit or alter, or be construed to limit or alter, the privileges

(a) This declaratory clause is an amplification of the provisions of sect. 25 of 6 & 7 Will. 4 c. 85.

of persons belonging to the Society of Friends commonly called Quakers, or of persons professing the Jewish religion, or impose on either of such bodies any obligations beyond such as are enacted in either of the said recited Acts.

21. Any marriage according to the usages of the Society of Friends commonly called Quakers, or to the usages of persons professing the Jewish religion respectively, where the parties thereto are both members of the said Society, or both persons professing the Jewish religion respectively, may be solemnized by licence (which licence the superintendent registrar to whom notice of the intended marriage shall have been given is hereby authorized to grant in the form or to the effect set forth in the said Schedule C. to this Act annexed) as effectually in all respects as if such marriage were solemnized after the issue of a certificate by such superintendent registrar in the manner provided by the said recited Acts or any of them; and the provisions in this present Act contained in relation to the solemn declaration to be made by the party intending marriage, and to the statement to be contained in the notice of such intended marriage that such marriage is intended to be celebrated by licence, and to the notice to be given of any such intended marriage by licence, and to the giving of certificates in the form or to the effect set forth in Schedule B. to this Act annexed, and to the fee and stamp to be paid for such licence, shall be applicable in all respects to every such marriage to be solemnized by licence according to the usages of the said Society or to the usages of persons professing the Jewish religion respectively.

Marriages of Quakers or Jews may be solemnized by licence.

22. The Registrar General shall furnish or cause to be furnished to the person whom twenty householders professing the Jewish religion, and being members of the West London Synagogue of British Jews, shall certify in writing under their hands to the Registrar General to be the secretary of the West London Synagogue of British Jews, and also to every person whom such secretary shall in like manner certify to be the secretary of some other synagogue of not less than twenty householders professing the Jewish religion, and being in connection with the West London Synagogue, and having been established for not less than one year, a sufficient number in duplicate of marriage register books and forms for certified copies thereof; and every secretary of a synagogue to whom such books and forms shall be furnished under this Act shall perform the same duties in relation to the registration of marriages between persons professing the Jewish religion as under an Act passed in the session of Parliament held in the sixth and seventh years of his late Majesty King William the Fourth, chapter eighty-six, intituled An Act for registering Births, Deaths, and Marriages in England, are to be performed by the secretary of a synagogue to whom marriage register

Registrar General to furnish marriage register books and forms to each certified secretary of a synagogue of British Jews.

Marriages under this Act good and cognizable.

Act not to extend to Ireland or Scotland. Commencement of Act.

books and forms for certified copies thereof have been or shall be furnished under that Act.

23. Every marriage solemnized under any of the said recited Acts or of this Act shall be good and cognizable in like manner as marriages before the passing of the first-recited Act according to the rites of the Church of England.

24. [Recites the Act of 15 & 16 Vict. c 36. Registrar General to allow searches to be made, and give extracts from the returns of certified places of worship made to him thereto, on payment of specified fees.]

25. Save as herein expressly provided, this Act shall not extend to Ireland or Scotland.

26. This Act shall come into operation on the first day of January, one thousand eight hundred and fifty-seven, and none of the provisions thereof shall take effect previous to that day.

## SCHEDULES.

### SCHEDULE (A.)

#### *Form of Notice of Marriage.*

To the superintendent registrar of the district of *Hendon* in the county of *Middlesex*.

I, the undersigned *James Smith*, hereby give you notice, that a marriage is intended to be had *without* [or by, as the case may be,] licence within three calendar months from the date hereof between me and the other party herein named and described; (that is to say,)

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which the Marriage is to be solemnized.	District and County in which the Parties respectively dwell.
<i>James Smith.</i>	<i>Widower.</i>	<i>Iron-monger.</i>	<i>Twenty-five years.</i>	<i>16, High Street, Hendon, Middlesex.</i>	<i>Seven or Fifteen Days, as the case may be,</i>	<i>Sion Chapel, West Street, Tunbridge, Kent.</i>	<i>Hendon, Middlesex.</i>
<i>Martha Green.</i>	<i>Spinster.</i>		<i>Nineteen Years.</i>	<i>Grove Farm, Tunbridge, Kent.</i>	<i>More than a Month.</i>		<i>Tunbridge, Kent.</i>

And I hereby solemnly declare, that I believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that *I*, the above-named *James Smith*, have, for the space of *fifteen* days immediately preceding the giving of this notice, had my usual place of abode and residence. Schedules.

[*If the marriage is intended to be had in a church or chapel of the Church of England insert in this space the following words, in the parish of , or " in the ecclesiastical district of , " (as the case may be,) and add the name of the parish or ecclesiastical district in which one of the parties resides*] within the above-mentioned district of *Hendon*.

[And I further declare, that I am not a minor under the age of twenty-one years, and that the other party herein named and described is not a minor under the age of twenty-one years. (*If one or both of the parties be under age these words must be expunged.*), (*or, as the case may be.*)

And I further declare, that *she* [*or I*] the said *Martha Green*, not being a *widow* [*or widower*], *is* [*or am*] a minor under the age of twenty-one years, and that the consent of *George Kilpin*, whose consent to *her* [*or my*] marriage is required by law, has been duly given and obtained thereto [*or "that there is no person whose consent to her [or my] marriage is by law required" (as the case may be) .*]

And I make the foregoing declarations solemnly and deliberately, conscientiously believing the same to be true, pursuant to the provisions of an Act passed in the twentieth year of her Majesty Queen Victoria, chapter 119, intituled "*An Act to amend the Provisions of the Marriage and Registration Acts*," well knowing that every person who shall knowingly or wilfully make and sign or subscribe any false declaration or who shall sign any false notice, for the purpose of procuring any marriage under the provisions of the said Act above-mentioned or any of the several Acts therein recited, shall suffer the penalties of perjury. In witness whereof I have hereunto set and subscribed my hand, this *fifth* day of *January* 1857.

*James Smith.*

Signed and declared by the above-  
named *James Smith* in the pre-  
sence of }

[*Here let the witness attest the signature of the party giving the notice according to one or other of the following "examples" :—*]

Schedules.

Example	Name of Witness.	Description.	Place of Abode.
1	John Cox.	Superintendent Registrar of Hendon District [or Deputy Superintendent Registrar of Hendon District].	Hendon, Middlesex.
2	Peter Green.	Registrar of Marriages for the Hendon District.	Hendon, Middlesex.

### SCHEDULE (B.)

#### Form of Superintendent Registrar's Certificate.

I, *John Cox*, superintendent registrar of the district of *Hendon*, in the county of *Middlesex*, do hereby certify, that on the *fifth* day of *January* 1857, notice was duly entered in the Marriage Notice Book of the said district of the marriage intended between the parties hereinafter named and described, and of such marriage being intended to be solemnized *without* [or by, as the case may be,] licence, delivered under the hand of *James Smith*, one of the parties; (that is to say.)

Name.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which the Marriage is to be solemnized.	District and County in which the Parties respectively dwell.
<i>James Smith.</i>	<i>Widower.</i>	<i>Iron-monger.</i>	<i>Twenty-five Years.</i>	<i>16, High Street, Hendon, Middlesex.</i>	<i>Fifteen Days</i>	<i>Sion Chapel, West Street, Tunbridge, Kent.</i>	<i>Hendon, Middlesex.</i>
<i>Martha Green.</i>	<i>Spinster.</i>		<i>Nineteen Years.</i>	<i>Grove Farm, Tunbridge Kent.</i>	<i>More than a Month.</i>		<i>Tunbridge, Kent.</i>

*Date of entry of Notice,*  
*5th January 1857.*  
*Date of Certificate given* } The issue of this certificate has  
*27th January 1857* } not been forbidden by any person  
authorized to forbid the  
issue thereof.

Witness my hand, this *twenty-seventh* day of *January* 1857.

(Signed) *John Cox,*  
Superintendent Registrar.

This certificate will be void unless the marriage is solemnized within three calendar months after the date of the entry of notice, namely, on or before the *fifth* day of *April* 1857.

les.

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SCHEDULE (C.)

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*Form of Superintendent Registrar's Licence for Marriage.*

To *A. B.*, of                      in the county of                      and *C. D.*  
of                      in the county of                      I, the undersigned  
superintendent registrar of the district of                      in the  
county of                      send greeting :

WHEREAS in pursuance of some or one of the statutes next hereinafter mentioned made and now in force concerning the contracting and solemnizing of marriages in England; (that is to say,) an Act passed in the seventh year of his late Majesty, King William the Fourth, chapter 85; an Act passed in the first year of her present Majesty, chapter 22; an Act passed in the fourth year of her said Majesty, chapter 72; and an Act passed in the twentieth year of her said Majesty, chapter 119; one of you did on the day of                      give due notice of your intention to enter into a contract of marriage, and you are desirous that such marriage should be speedily performed at                      in the district of                      : And whereas it has been made to appear to my satisfaction that in regard to your said intended marriage you have severally in all respects complied with the provisions and requirements of the above-mentioned statutes, so far as such provisions and requirements are applicable to and binding upon you or either of you : And whereas no impediment of kindred or alliance or other lawful hindrance to the said marriage has been shown to exist : And whereas the certificate required by law has been duly issued by me : Now therefore I, the said superintendent registrar, by virtue of the power and authority vested in me in that behalf, do hereby grant unto you the aforesaid *A. B.* and *C. D.* full licence and permission to proceed in due form of law to contract and solemnize such marriage at                      in the said district at any time within but not after the expiration of three calendar months next following the day of

Witness my hand, this

day of

*E. F.*,

Superintendent Registrar of the  
above-mentioned district.

## FORGERY ACT.

24 &amp; 25 VICT. c. 98.

*An Act to consolidate and amend the Statute Law of England and Ireland relating to indictable offences by Forgery.*

[6th August 1861.]

As to forging marriage licences:—

Forging or  
uttering  
marriage  
licence or  
certificate.

35. Whosoever shall forge or fraudulently alter any licence of or certificate for marriage, or shall offer, utter, dispose of, or put off any such licence or certificate, knowing the same to be forged or fraudulently altered, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to forging registers of births, marriages, and deaths:—

Forging  
registers of  
births, bap-  
tisms, mar-  
riages,  
deaths, or  
burials.

36. Whosoever shall unlawfully destroy, deface, or injure or cause or permit to be destroyed, defaced, or injured, any register of births, baptisms, marriages, deaths, or burials which now is or hereafter shall be by law authorized or required to be kept in England or Ireland, or any part of any such register, or any certified copy of any such register, or any part thereof, or shall forge or fraudulently alter in any such register any entry relating to any birth, baptism, marriage, death, or burial, or any part of any such register, or any certified copy of such register, or of any part thereof, or shall knowingly and unlawfully insert or cause or permit to be inserted in any such register, or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death, or burial, or shall knowingly and unlawfully give any false certificate relating to any birth, baptism, marriage, death, or burial, or shall certify any writing to be a copy or extract from any such register, knowing such writing, or the part of such register whereof such copy or extract shall be so given, to be false in any material particular, or shall forge or counterfeit the seal of or belonging to any register office or burial board, or shall offer, utter, dispose of, or put off any such register, entry, certified copy, certificate, or seal, knowing the same to be false, forged, or altered, or shall offer, utter, dispose of, or put off any copy of any entry in any such register, knowing such entry to be false, forged, or altered, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term

not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

37. Whosoever shall knowingly and wilfully insert or cause or permit to be inserted in any copy of any register directed or required by law to be transmitted to any registrar or other officer any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any copy of any register so directed or required to be transmitted as aforesaid, or shall knowingly and wilfully sign or verify any copy of any register so directed or required to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false, or shall unlawfully destroy, deface, or injure, or shall for any fraudulent purpose take from its place of deposit, or conceal, any such copy of any register, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Making  
false entries  
in copies of  
register sent  
to registrar.

#### MARRIAGES (SOCIETY OF FRIENDS).

35 VICT. c. 10.

*An Act to extend the provisions of the Acts relating to Marriages in England and Ireland, so far as they relate to Marriages according to the usages of the Society of Friends.*

[18th May 1872.]

WHEREAS by an Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter eighteen, after reciting certain provisions relating to marriages according to the usages of the Society of Friends called Quakers, contained in the Acts of the sixth and seventh years of the reign of King William the Fourth, chapter eighty-five, intituled "An Act for Marriages in England," and certain other provisions relating to such marriages, contained in the Act of the seventh and eighth years of the reign of her present Majesty, chapter eighty-one, intituled "An Act for Marriages in Ireland, and for registering such Marriages," it was enacted (amongst other things), "that from and after the thirtieth day of June one thousand eight hundred and sixty, marriages might be contracted and solemnized according to the usages of the said Society of Friends commonly called Quakers, in England and Ireland respectively, not only in the case provided for by the said

23 & 24 Vict.  
c. 18.

6 & 7 W. 4,  
c. 55.

7 & 8 Vict.  
c. 81.



recited provisions, but also in cases where one only or where neither of the parties to the marriage should be a member of the said society ;" but in the said Act of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter eighteen, there is contained the following proviso, namely, " Provided always, that the party or parties who shall not be a member or members of the said society shall profess with or be of the persuasion of the said society :"

And whereas, in order that the relief intended to be given by the said last-mentioned Act may be made fully effective, it is expedient that the said recited proviso shall be repealed :

Be it therefore enacted by the Queen's most excellent Majesty by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Amendment  
of 23 & 24  
Vict. c. 18.

1. From and after the first day of January one thousand eight hundred and seventy-three, the said recited Act of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter eighteen, shall be construed and shall take effect as if the words next herein-after specified were omitted therefrom, namely, " Provided always, that the party or parties who shall not be a member or members of the said society shall profess with or be of the persuasion of the said society :"

Provided that no marriage shall be valid under this Act unless when notice of the intention to solemnize such marriage is given to the superintendent registrar in England or (as the case may be) to the registrar of marriages in Ireland, as required by law, a certificate shall be produced to such superintendent registrar or registrar of marriages purporting to be signed by some registering officer of the said Society of Friends in England or in Ireland respectively to the effect that the party by whom or on whose behalf such notice is given, or each such party (as the case may be), is authorised thereto under or in pursuance of some general rule or rules of the said Society in England or Ireland respectively, and such certificate shall be for all purposes conclusive evidence that the party by whom or on whose behalf such notice is given, or each such party (as the case may be), is duly authorised to proceed to the accomplishment of such marriage according to the usages of the said society, and the register of such marriage, or a copy thereof duly certified according to law, shall be conclusive evidence of the due production of such certificate as aforesaid ; but no such certificate shall be required in cases where the party giving such notice shall declare, either verbally or in writing if thereunto required, that both the parties to the intended marriage are either members of the said society or in profession with or of the persuasion thereof.

STATUTES CONFIRMING MARRIAGES.<sup>1</sup>

Acts con-  
firmatory of  
Marriage.

(1) *Of various descriptions.*

- 12 Charles 2, c. 33. . . . Marriages during the Common-  
wealth.  
21 Geo. 3, c. 53. . . . Marriages before 1st Aug. 1781,  
in churches and chapels  
erected since 26 Geo. 2, c.  
33.  
44 Geo. 3, c. 77. . . . Similar marriages before 25th  
Mar. 1805.  
48 Geo. 3, c. 127. . . . Similar marriages before 23rd  
Aug. 1808.  
3 Geo. 4, c. 75. . . . Marriages solemnized by licence  
without consent.  
4 Geo. 4, c. 5. . . . Marriages solemnized by licen-  
ces granted by unauthorized  
persons.  
4 Geo. 4, c. 91 (a). . . . In the chapels of British mis-  
sions and factories, &c.,  
abroad.  
6 Geo. 4, c. 92. . . . In churches erected since 26  
Geo. 2, c. 33.  
11 Geo. 4 & 1 Wil. 4, c. 18. . . . In certain churches and chapels  
10 & 11 Vict. c. 58. . . . Of Quakers and Jews before  
certain periods.  
12 & 13 Vict. c. 68, s. 20 (b). . . . Marriages celebrated abroad.  
18 & 19 Vict. c. 81, s. 13 (c) } In certain registered places of  
19 & 20 Vict. c. 119, s. 17 } worship.

(2.) *In various particular places.*

- Blakedown . . . . . 31 & 32 Vict. c. 113  
China, &c. . . . . 31 & 32 Vict. c. 61  
East Coatham . . . . . 19 & 20 Vict. c. 70.  
Eastbury . . . . . 28 & 29 Vict. c. 31.  
Frampton Mansel . . . . . 31 & 32 Vict. c. 23.  
Hamburg . . . . . 3 & 4 Will. 4. c. 45.  
Hulme . . . . . 16 & 17 Vict. c. 122.  
India, British territories in . . . . . 58 Geo. c. 84.  
Ionian Islands before 1864 . . . . . 27 & 28 Vict. c. 77.  
Lisbon . . . . . 22 & 23 Vict. c. 64.  
Mexico . . . . . 17 & 18 Vict. c. 88.  
Morro Velho . . . . . 30 & 31 Vict. c. 93.  
Moscow, Takiti, and Ningpo . . . . . 21 & 22 Vict. c. 46.

(a) For the text of this statute see *ante*, p. 329.

(b) See p. 369.

(c) See pp. 377, 388.

Statutes confirming Marriages.	New Zealand Company . . . . .	12 & 13 Vict. c. 79.
	Newfoundland . . . . .	5 Geo. 4, c. 68.
	Odessa . . . . .	30 & 31 Vict. c. 2.
	Oxford . . . . .	6 & 7 Will. 4, c. 92.
	Park Gate . . . . .	32 & 33 Vict. c. 30.
	Rainow . . . . .	24 & 25 Vict. c. 16.
	Rydal . . . . .	23 & 24 Vict. c. 1.
	St. Petersburg . . . . .	4 Geo. 4, c. 67.
	Todmorden . . . . .	18 & 19 Vict. c. 66.
	Topcliffe . . . . .	22 Vict. c. 24.
	Upton cum Chalvey . . . . .	13 & 14 Vict. c. 38.
	Wandsworth (St. Ann's) . . . . .	6 & 7 Will. 4, c. 24.
	West Hartlepool . . . . .	20 & 21 Vict. c. 29.

## II.

### CONSTITUTIONS AND CANONS ECCLESIASTICAL, 1603 (a). Canons of 1603.

#### CANONS RELATING TO MARRIAGE.

##### 62. *Ministers not to marry any person without Banns, or Licence.*

No minister, upon pain of suspension *per triennium ipso facto*, shall celebrate matrimony between any persons, without a faculty or licence granted by some of the persons in these our constitutions expressed, except the banns of matrimony have been first published three several Sundays or holy-days, in the time of divine service, in the parish churches and chapels where the said parties dwell, according to the Book of Common Prayer. Neither shall any minister, upon the like pain, under any pretence whatsoever, join any persons so licensed in marriage at any unseasonable times, but only between the hours of eight and twelve in the forenoon, nor in any private place, but either in the said churches or chapels where one of them dwelleth, and likewise in time of divine service; nor when banns are thrice asked, and no licence in that respect necessary, before the parents or governors of the parties to be married, being under the age of twenty and one years, shall either personally, or by sufficient testimony, signify to him their consents given to the said marriage.

##### 63. *Ministers of exempt Churches not to marry without Banns, or Licence.*

Every minister, who shall hereafter celebrate marriage between any persons contrary to our said constitutions, or any part of them, under colour of any peculiar liberty or privilege claimed to appertain to certain churches and chapels,

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(a) As to the authority of the canons, see chap. i. *ante*. "It is agreed on all hands, and maintained by the common lawyers as well as civilians, that the canons (at least with respect to us of the clergy), are law, and binding under their several penalties, in all cases whatsoever where they do not contradict or interfere with the laws of the State."—Archdeacon Sharp on the Rubric and Canons, 5th charge.

## Appendix.

Canons of  
1603.

shall be suspended *per triennium* by the ordinary of the place where the offence shall be committed. And if any such minister shall afterwards remove from the place where he hath committed that fault, before he be suspended, as aforesaid, then shall the bishop of the diocese, or ordinary of the place where he remaineth, upon certificate under the hand and seal of the other ordinary, from whose jurisdiction he removed, execute that censure upon him.

### 99. *None to marry within the Degrees prohibited.*

No persons shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority in the year of our Lord God 1563 (a). And all marriages so made and contracted shall be adjudged incestuous and unlawful, and consequently shall be dissolved as void from the beginning, and the parties shall by course of law be separated. And the aforesaid table shall be in every church publicly set up and fixed at the charge of the parish.

### 100. *None to marry under Twenty-one Years, without the Parents' consent.*

No children under the age of one and twenty years complete shall contract themselves, or marry, without the consent of their parents, or of their guardians and governors, if their parents be deceased (b).

### 101. *By whom Licences to marry without Banns shall be granted and to what sort of persons.*

No faculty or licence shall be henceforth granted for solemnization of matrimony betwixt any parties without thrice open publication of the banns, according to the Book of Common Prayer, by any person exercising any ecclesiastical jurisdiction, or claiming any privileges in right of their churches; but the same shall be granted only by such as

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(a) The table, in which the degrees are set forth in Latin and English, was included in "An Admonition to all such as shall intend hereafter to enter the state of matrimony godly and agreeably to laws: with tables of consanguinity and affinity: set forth by the most reverend father in God, Matthew Parker, Archbishop of Canterbury, Primate of England and Metropolitan, 1563." See chap. ii. *ante*.

(b) According to Archdeacon Sharp, notwithstanding the banns be asked out in the case of minors, without impediment alleged, the clergyman "must not rest upon this negative proof of consent; he must have positive evidence, and that too from the parents or guardians themselves, either personally giving it, or signifying it to him by sufficient testimony."—Sharp, 13th charge.

have episcopal authority, or the commissary for faculties, vicars general of the archbishops and bishops, *sede plena*; or, *sede vacante*, the guardian of the spiritualities, or ordinaries exercising of right episcopal jurisdiction in their several jurisdictions respectively, and unto such persons only as be of good state and quality, and that upon good caution and security taken. Canons of 1603.

*102. Security to be taken at the granting of such Licences, and under what conditions.*

The security mentioned shall contain these conditions: First, that at the time of granting every such licence there is not any impediment of precontract, consanguinity, affinity, or other lawful cause to hinder the said marriage. Secondly, that there is not any controversy or suit depending in any court before any ecclesiastical judge, touching any contract or marriage of either of the said parties with any other. Thirdly, that they have obtained thereunto the express consent of their parents (if they be living), or otherwise of their guardians or governors. Lastly, that they shall celebrate the said matrimony publicly in the parish church or chapel where one of them dwelleth, and in no other place, and that between the hours of eight and twelve in the forenoon.

*103. Oaths to be taken for the conditions.*

For the avoiding of all fraud and collusion in the obtaining of such licences and dispensations, we further constitute and appoint, that before any licence for the celebration of matrimony without publication of banns be had or granted it shall appear to the judge by the oaths of two sufficient witnesses, one of them to be known either to the judge himself or to some other person of good reputation then present, and known likewise to the said judge, that the express consent of the parents, or parent, if one be dead, or guardians or guardian of the parties, is thereunto had and obtained. And furthermore, that one of the parties personally swear, that he believeth there is no let or impediment of precontract, kindred, or alliance, or of any other lawful cause whatsoever, nor any suit commenced in any ecclesiastical court, to bar or hinder the proceeding of the said matrimony, according to the tenure of the foressaid licence.

*104. An Exception for those that are in Widowhood.*

If both the parties which are to marry being in widowhood do seek a faculty for the forbearing of banns, then the clauses before mentioned, requiring the parents' consents,

Canons of  
1603.

may be omitted; but the parishes where they dwell, both shall be expressed in the licence, as also the parish named where the marriage shall be celebrated. And if any commissary for faculties, vicars general, or other the said ordinaries, shall offend in the premises, or any part thereof, he shall, for every time so offending, be suspended from the execution of his office for the space of six months; and every such licence or dispensation shall be held void to all effects and purposes, as if there had never been any such granted; and the parties marrying by virtue thereof shall be subject to the punishments which are appointed for clandestine marriages.

### III.

EXTRACTS FROM EVIDENCE AND COMMUNICATIONS ON THE STATE OF THE MARRIAGE LAW IN ENGLAND, PRINTED IN THE REPORT OF THE ROYAL COMMISSION ON THE LAWS OF MARRIAGE, 1868.

1. OBSERVATIONS BY THE REGISTRAR GENERAL OF ENGLAND ON THE MARRIAGE ACT OF 1836 AND SUBSEQUENT ACTS (a).

Somerset House, 8th February, 1866.

Registrar General's observations on the Marriage Law.

The statutes relating to marriage, which are administered by the Registrar General are,—

6 & 7 Will. IV. c. 85 and 86	. . .	1836
1 Vict. c. 22	. . .	1837
3 & 4 Vict. c. 72	. . .	1840
19 & 20 Vict. c. 119	. . .	1856

*Consuls.*

12 & 13 Vict. c. 68	. . .	1849
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*India.*

14 & 15 Vict. c. 40	. . .	1851
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The present law of marriage of Nonconformists and of Catholics, of Quakers and of Jews,—although I did not myself approve of *every* alteration made by the Act of 1856, which was a measure introduced into Parliament on the part of the committee of deputies of the three denominations, not by her Majesty's Government, having been in operation nearly ten years,—does not, in my opinion, now need any change, except, perhaps, that greater publicity should be given to notices of marriage by certificate, and that in the case of marriages of minors there should be further proof given than at present of consent of parents, guardians, &c.

I hold that the safeguards and precautions against clandes-



Registrar  
General  
on the  
Marriage  
Law.

time marriages are under these Acts which I administer more efficacious than the practice in the Established Church, in some instances.

When, in 1822, the Act 3 Geo. IV. c. 75, was passed, an attempt was then made to render the publication of banns in the Established Church more stringent, and it was guarded with many conditions; but in practice it was found that too much was at that time required, and that the restrictions were too rigorous. Exact compliance with the new law was uncommon, and consequently many marriages were solemnized which were voidable, and the questions as to the legitimacy of subsequent issue were numerous; therefore, in the following year, Act 4 Geo. IV. c. 76 was passed, repealing the statute which was found too strict and too exacting; and since that date, 1823, the present practice has been in existence. A mere statement as to the previous residence of the parties appears to be all that is necessary, no proof being required as to condition, or age, or consent of parents or guardians, in case of minors; the book in which the names are recorded is not accessible to the public; and in large urban parishes the publication of banns appears to me to be almost useless. A curate of St. Pancras has told me that on one Sunday morning he published the banns of ninety-nine couples, 198 names.

But the restrictions in force with respect to the necessary forms preceding the marriage of Nonconformists and Catholics, of Quakers and of Jews, are less rigorous than what was required by Act 3 Geo. IV. c. 75, repealed in 1823, but are more stringent, in some cases, than the present practice in the Established Church, and do not appear to me to require much modification.

The first process, in order to a marriage by certificate without licence, is to give a written notice in a form prescribed by statute, accompanied by a solemn declaration as to several particulars enumerated in the Schedule of the Act, attested in writing by a registration officer; if this notice and declaration be false in any particular, the party convicted suffers the pains and penalty of perjury, of which matter he has due notice, a printed caution being exhibited to him previous to affixing his signature.

Then that notice is entered by the superintendent registrar in the Marriage Notice Book, and is exhibited in the register office of the district, and is always accessible to the public, who have liberty to search and examine it. During the three weeks which must elapse between the entry of notice of marriage without licence, and the issue of the superintendent registrar's certificate authorizing the marriage in the register office, or in the place of religious worship specified in the notice, the proposed marriage may be "*forbidden*," or a caveat may be entered, which, in the interim, stays all proceedings.

Then, after twenty-one days, the issue of the certificate not being "forbidden," and no caveat being entered, in ordinary circumstances the certificate authorizing the marriage is issued; and besides two witnesses in places of religious worship, the officiating minister is generally, and the registrar of marriage is always present at the ceremony, which takes place between the hours of eight and twelve with open doors; and in register offices the presence of the superintendent registrar is required, in addition to the registrar of marriages; the register book is signed by the persons married, by the witnesses, by the officiating minister, if any, or the superintendent registrar, and by the registrar of marriages, a caution being previously exhibited.

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With respect to marriages by licence in the Established Church, no interval, during which inquiry may be made by parents or guardians, is necessary between the application for the granting of the licence and the solemnization of the marriage; and a clergyman holding the office of surrogate, after administering to one of the parties to be married the oath that there is no legal impediment, may grant a licence for a marriage in his own church, which he himself may in a few minutes be called upon to celebrate. I know a case where, on 27th March, 1865, A. and B. coming at 10.30 a.m. to the church of the ecclesiastical district in Islington, in which they resided, demanded to be married immediately; they produced no licence, but they were told at the church that by going to Doctors' Commons they might obtain a licence and be married that morning. A. went accordingly, and returned with the licence and A. was married to B. before twelve o'clock that day.

Whereas under the Acts which I administer the notice of marriage by licence, accompanied by a solemn declaration stamped and attested in writing by a registration officer, must be entered in the Marriage Notice Book, which in the register office of the district is always open to the public, who have a right to search and examine it: and during an entire day between entry of the notice and issue of the licence, parents and guardians and relations have an opportunity of "*forbidding*" the proposed marriage or of entering a caveat, which immediately stops further proceedings. At the celebration of the marriage by licence, either in a place of religious worship or in a register office, the same persons are present and the same forms are gone through as have been mentioned above in the case of marriages by certificate.

In all these cases every care is taken to prevent irregular and clandestine marriages being celebrated, in the hope of enforcing compliance with the existing law in every minute particular.

Regulations strictly defining the duties of superintendent registrars and registrars of marriages are printed for their

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use, as approved by Secretary of State for the Home Department.

Licences for marriage in churches or chapels according to the rites of the Church of England are not granted by superintendent registrars.

No marriage by certificate granted by superintendent registrar can be solemnized in any church or chapel of the Church of England, nor in any dissenting place of worship whether by certificate or by licence, without the consent of the minister previously obtained.

After a marriage in a register office, if the parties wish subsequently to add the religious ceremony used by the church of which they are members, ministers are permitted to read or celebrate the marriage service of the church or persuasion to which they belong.

Facilities are afforded for marriage in England when one of the parties resides in Scotland or Ireland, a certificate of proclamation of banns in Scotland, and a certificate for marriage issued by a registrar in Ireland, being considered equivalent to a certificate for marriage granted by a superintendent registrar in England.

Provision is also made for marriages being celebrated in a registered building in an adjoining district in certain cases, and also in the usual place of worship of the parties or of one of them.

I am a strong advocate for the marriages of Roman Catholics and Nonconformists continuing to be recorded as at present by the civil registration officers rather than by the ecclesiastics.

With a view to attaining greater publicity as to notices of marriages in register offices without licence, it has been proposed that the names of parties intending marriage should be exhibited *outside* the register office. I cannot recommend this, believing that in some cases it would be considered intolerable.

*Publication of banns in churches of populous parishes.*—That the publication of banns in populous parishes in many large towns is useless is made evident not only by ninety-nine couples being asked on one Sunday at St. Pancras, but also by 189 couples being asked in the cathedral church at Manchester on the 11th December 1864, and 202 couples on 10th December 1865, and by 125 couples being asked at St. Mary's Lambeth, on 10th December 1865; in many cases merely the names being mentioned, unaccompanied with any announcement of condition—whether bachelors or widows, &c.

*Registration of marriages according to rites of the Established Church in duplicate.*—As to registration of marriages by officiating ministers of the Established Church, seeing that certified copies of all entries are sent regularly to the general register office and indexed there, I am not aware of any

advantage in registering in *duplicate*, and in sending that duplicate register book to the superintendent registrar. Where there are many marriages in churches on one morning, there is great difficulty in persuading the parties married and witnesses—four in number at least—to sign *one* register book; always to obtain their signatures to *two* is impossible; therefore the duplicate does not agree with the other copy, and it appears to me that an incorrect register is worse than having none at all. At St. Mary, Lambeth, thirty marriages were solemnized on 24th December, 1865, and thirty-nine on 25th December, 1865; at the Cathedral Church, Manchester, fifty-six marriages were solemnized on the 25th December, 1864, and fifty-five on 24th December, 1865.

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I am of opinion, therefore, that marriages in the Established Church should not be registered in *duplicate*, and that there is no occasion for superintendent registrars having those duplicates in register offices, as certified copies are sent to the general register office at Somerset House.

*Marriages in registrar offices sometimes preferred, on account of less publicity.*—I am told that there is one advantage in persons having the opportunity of being married in register offices. Couples living in fornication are often persuaded by Scripture readers, &c., &c., to be married there privately and unknown to their friends; they would dislike the publicity of banns, and be ashamed to go before ministers of religion.

Instances occur where in London clandestine marriages are apprehended as likely to take place; if the notices are given to a superintendant registrar, relatives need go only to thirty-six register offices for the purpose of searching the notice books, and ascertaining what is intended; whereas to visit the 370 churches and chapels in London in which marriages may be solemnized according to the rites of the Established Church, and to inspect the banns' books, is impracticable.

*Legitimizing issue per subsequens matrimonium.*—As to the Scotch law of legitimizing issue *per subsequens matrimonium*, I do not wish to see it introduced into England and Wales. I do not approve of a man shortly before his death marrying a woman whom through life he has been ashamed to make his wife, and thus legitimizing the issue of a long concubinage, altogether changing their status, and depriving of his supposed inheritance him who has for many years been brought up and considered as his lawful heir. It is a power which immodest designing women should not be able to persuade weak men in their dotage to exercise.

I know a case where a man eighty years of age, possessing large landed estates and great wealth, has never been married, but has illegitimate sons and daughters by more than one woman. This gentleman's brother, seventy-six years old, has always been considered heir to the property. His eldest son, forty-six years old, has in like manner been always brought

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up as sure to succeed to these great estates. Marriage settlements have been made accordingly, and the great-nephew of the person first spoken of, now thirteen years old, is in the same way considered heir sooner or later to his great-uncle's wealth.

If the Scotch law legitimating issue *per subsequens matrimonium* were introduced into England, this gentleman to whom I refer would be empowered to make a selection from his aged paramours, and, by marrying the favoured one, make her eldest son heir to his extensive estates, and, were he a marquis, all the sons and daughters of that selected family would become at once lords and ladies.

This is a system I cannot approve; it may prevail in many countries as well as Scotland, but in my opinion it should not be adopted here.

*Law of Marriage in Scotland.*—It may be presumptuous in me to give an opinion on the Scotch law of marriage; but having witnessed in Cumberland and along the border the good effects produced by Lord Brougham's Act, 19 & 20 Vict. c. 96, in diminishing the number of marriages contracted by inhabitants of England and Wales at Gretna Green, &c., a certain length of previous residence in Scotland being rendered necessary, I venture to say that advantage would arise if *irregular* marriages were abolished altogether.

I think that marriage should not be established and held to be valid when founded on what is "meant" by parties living together, and on "intention." Marriage should be openly avowed, and recorded in public documents, and attested by witnesses.

Why should the descent of titles and great estates be left to depend on the loose and fragmentary evidence of "habit and repute;" and why should any one be allowed to pass "into the respectability of matrimony" by mere cohabitation; or rather what respectability can attach to a relation so lightly formed and so easily explained away?

I think the law should be altered which in Scotland permits two minors, without consent of parents or guardians, by deliberate interchange of present consent, to enter into the relation of husband and wife by merely saying to each other, "I take you for my wife," and "I take you for my husband," thus establishing a legal marriage if done deliberately, without fraud, and if proved.

I believe, if there is no fraud, a youth of fourteen years of age and a girl twelve years old can in Scotland thus constitute a valid marriage, which cannot be set aside unless cause should occur for divorce, and yet that same person, although seised in fee simple of his estate, cannot legally sell, exchange or encumber an acre of that estate until he is twenty-one years of age, although by the marriage which he contracted when fourteen years old the whole of that estate, and all his

honours—perhaps a dukedom—will go to the issue of that early irregular marriage. It appears to me that this should be reformed.

GEORGE GRAHAM, Registrar General.

2. SUGGESTIONS FOR AN ALTERATION OF THE LAW CONCERNING BANNS OF MARRIAGE.

Extract from report of a committee of the Lower House of Convocation of the province of Canterbury, appointed in February, 1866 :—

Suggested  
change in  
law of  
banns.

I. That in any alteration of the law the duly authorized rubrics in the Book of Common Prayer relating to the publication of banns remain unaltered.

II. That the banns be published in the morning service (whenever there is morning service) after the Nicene Creed; and, where there is no morning service on a Sunday on which banns are to be published, that then they be published in the evening service at the end of the prayers.

III. That no clergyman shall publish the banns of any persons unless they deliver or cause to be delivered to him a notice dated on the day on which it is delivered, stating—

a. Whether the persons are bachelor or widower, spinster or widow.

b. That they have lived in the parish where the banns are to be published at least seven days, specifying in the said notice the exact number of days they have lived there, if less than a calendar month, and the place in the parish where each party has lived; and, if there be streets with names and houses numbered, then the names of the streets and the numbers of the houses in each case.

c. That they know no hindrance or impediment to the marriage by reason of consanguinity, affinity, or existing marriage.

d. That neither party is a minor, or, if either or both parties be minors, then that the consent of the father or lawful guardian, or, if there be no lawful guardian, of the mother, has been obtained; or that there is no person by law authorized to give such consent.

IV. That the particulars required to be given in the said form shall be written therein by one of the persons intending marriage, or by some person for him or her, at his or her dictation, and shall be declared and signed by that person in the presence of the minister or of one of the churchwardens or of the parish clerk, who shall attest such signature.

v. That any clergyman may, if he see fit, require such notice of banns to be delivered to him twenty-four hours before the time of the first publication of the said banns.

Suggested  
change in  
law of  
banns.

VI. That, if any persons intending to marry wish to avoid the public asking of the banns in service time, the clergyman of the parish shall, at their desire, enter a notice (to be signed by the persons intending marriage, and by a churchwarden of the parish or parishes in which they severally dwell, or by two householders known to the clergyman, and to whom one at least of the persons intending marriage is known, dating such notice on the day on which it is entered) in a book to be kept for the purpose by him, or by such person as he shall appoint; which book any person may be allowed, on application, to examine; and that, after the expiration of twenty-one days from the date thereof, if no impediment be alleged or be in any way known to the clergyman, he shall, on application, deliver unto one of the said persons a certificate, signed by him, and, on the production of such certificate, the persons intending marriage shall be entitled to have their marriages solemnized in the church named in the notice, being the parish church of one of the persons intending marriage (a).

VII. That any person wilfully making or signing a declaration in any of these matters containing any statement known by the person who signs or makes such declaration to be false shall be liable to suffer the penalties of perjury.

VIII. Provided, that in all cases of such marriage without asking of banns in service time, in which either of the persons to be married is a minor, the persons intending marriage must deliver to the clergyman, together with the aforesaid notice, a declaration of consent on the part of the father, or lawful guardian, or, if there be no lawful guardian, by the lawful mother of the minor, signed by him or her, and attested by the clergyman or churchwarden of the parish where such father, or guardian, or mother dwells, unless such consent be distinctly signified by word of mouth to the clergyman granting such certificate, by the person empowered by him to give such consent, or a declaration signed by both parties, that there is no person entitled by law to give such consent.

IX. That if the parties intending marriage desire to be married in any church within the diocese other than the church of the parish wherein one or both of the parties live, and where the banns have been published or notice of marriage entered, a certificate of the asking of banns in service time, or a certificate of the notice having been duly entered in the notice book for twenty-one days as aforesaid, may be addressed to the minister of any parish within the diocese, and the minister of such parish may, if he see fit, solemnize the marriage on the production of the said certificate (or certificates, if the persons dwell in divers parishes), in the

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(a) Forms of notice and certificate are suggested by the committee.

same manner as if the banns had been published in his own church.

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x. That the fees be of one uniform scale, and that those for marriages at church and those at the registrar's office should be as nearly as possible equalized.

xi. That it continue to be necessary that marriages should be solemnized within three calendar months after the last asking of banns in service time, and that, in cases where the banns are recorded in the book, the marriage must be solemnized within three calendar months from the date of the entry in the book.

St. Peter's day, 1866.

Suggestions by the Rev. S. C. Wilks, rector of Nursling, Hants:—

"As some counteraction, and I trust a powerful one, to the evils which have been specified, I would suggest the adoption of a banns book, containing adequate depositions, to be subscribed by applicants before publication, and guarded by penalties for wilful falsification. Some clergymen, I am aware, give up the whole system of banns as incorrigible. The age, they say, has outgrown them, and many men, and most women, are now-a-days too well-bred or retiring to like to have their names paraded in public. It has been proposed therefore that every incumbent or responsible curate should be empowered to grant cheap licenses for his own parish. This would throw a heavy burden upon clergymen in populous parishes; and would convert a parsonage study into a lawyer's office. The secrecy which is alleged as an objection against the registral system would be town's talk as compared with a private whisper in a pastoral library; and as there are Keiths in every profession, we should have a return to some of the evils of the marriage-shop system.

"It will be a step towards this desired end, that the banns book should be a faithful record of the affiance. *It should be simple, concise, and unmistakably clear: it should include all that ought to be demanded, and nothing more; it should be restricted to matters within the distinct knowledge of the parties, and not involving anything which any truthful person can object to subscribe, or contravening any law of God, or the Church, or the Legislature.*"

[A form of banns book is then suggested.]

Observations and suggestions by others who contributed information to the Commissioners:—

"Parties intending marriage in a church should make the same declaration as to age, absence of impediment, &c., as is required by 19 & 20 Vict. c. 119, s. 2, in case of notice of marriage before the registrar, *mutatis mutandis*. Such declaration to be made before the clergyman, or some person appointed by him to receive it.



As to the law  
of banns.

"In parishes of moderate population the clergyman might without inconvenience receive those declarations himself, and it would be desirable that he should do so; but in large town parishes it might be inconvenient, for which reason it is above proposed that a substitute should be allowed.

"The declaration ought to be made not by one only, but by both the parties, and they should make it separately, *not* in each other's presence. A profligate man or woman, who wished to contract an unlawful marriage, or to marry a minor without consent, might not mind making a false declaration for the purpose, at which, nevertheless, the innocent but deluded party might pause. If the parties live in different parishes (or unions), each might make the declaration before his or her proper clergyman (or registrar). The declaration should be carefully read over and explained by the clergyman (or registrar) to the party making it. Clergymen and registrars should be made to understand that this is a material duty."—*Ven. J. Randall, Archdeacon of Berks.*

"At present there is no punishment to any party making a false statement, and thus having their banns published at the church of a parish in which they do not reside. Whilst it is quite impossible for the clergyman, who is now by law punishable for celebrating such marriages, to ascertain the falsehood of such statements, as his time, if his parish be large, is entirely occupied by his other necessary duties. It would be, therefore, advantageous to assimilate the law to that which regulates the notice of banns at the registry, and to make a false statement in either case perjury. It would also, I believe, be productive of much good if the punishment were only a *fine* for marrying parties not resident in the parish; and if the officiating minister, and more especially his clerk, were obliged to pay as fine twice or thrice the amount of marriage fee."—*The Bishop of Durham.*

"It appears to me that some further precautions are advisable previous to the publication of banns, as the Act (4 Geo. 4, c. 76), as at present carried out, affords little or no security against clandestine marriages. It is notorious that the provisions of the seventh section of the Act are in many parishes rarely if ever complied with, and that there are repeated instances of banns being published of the names of parties, neither of whom have ever resided in the parish where the marriage subsequently takes place.

"It is suggested that this evasion of the Act might to a certain extent be remedied if one of the parties to be married were required (previous to any publication of the banns) to appear and make a declaration in writing before the incumbent or curate of the parish or district, in verification of the notice required by the Act."—*J. Shephard, Esq., Registrar of the Diocese of London.*

"The evil that exists with respect to rural parishes is this:

If a man wishes to marry his wife's sister, for instance, he goes into one of the neighbouring great towns, where he is not known, and there publishes the banns; he may take a lodging for fifteen days, but more often the clerk of the parish, who is generally deputed by the incumbent to look after these things, assumes that he is resident."—*Lord Auckland, Bishop of Bath and Wells.*

As to the law of banns.

"In large parishes it is almost impossible for the clergyman to make personal inquiries concerning parties who may take up a temporary residence for the purpose of having the banns of marriage published in the parish church. All such inquiries, therefore, are inevitably left to the parish clerk, whose interest it is to inquire as little as possible. Hence, if any persons desire to contract an illegal marriage, they choose one of the populous parishes of our large towns, where they readily escape notice, and where they know that the clergyman is too busily occupied, too overworked, to be able to investigate all the questions concerning them which ought to be known; and however severe be the penalty which may be inflicted on a clergyman for neglect of this kind, the neglect will still continue, because one man can only do one man's work."—*The Bishop of Ely.*

"As to the time of publication, I am clear that immediately after the Second Lesson in the morning is not only the present legal time, but that it ought not to be altered. At Plymouth, for more than twenty years, sailors have been married immediately after the last publication of banns in the middle of the service, and I have heard of a case also at Southwold."—*C. S. Greaves, Esq., Q.C.*

### 3. OBSERVATIONS AND SUGGESTIONS AS TO EPISCOPAL LICENCES.

"I beg to observe, that the law seems to me to be defective in not constituting false swearing before the ecclesiastical judge to obtain a licence the crime of perjury. This defect has very recently prominently presented itself to my notice, in a case in which, by means of an oath taken in Doctors Commons, a man living in this diocese obtained a licence, and actually went through the form of marriage in a London church with his father's widow.

As to episcopal licence.

"In the course of my official life several other instances of such false swearing, though not leading to so horrible an outrage upon morality as the one I have mentioned, have come before me, and I cannot but think that they are in a measure attributable to the leniency of the law."—*F. Macdonald, Esq., Registrar to the Diocese of Salisbury.*

"To ground an application for a marriage licence an affidavit is necessary, in which, among other facts deposed to, it is stated that one of the parties has had his or her usual

As to episcopal marriage licences.

place of abode for fifteen days last past within the parish in the church of which the marriage is to be solemnized. Now I believe that this is constantly abused. Parties in rural places, desirous of secrecy, or from other motives, resolve to be married at a church in a neighbouring town or city, and simply engage a room without occupying it, for the requisite period, and, upon that, or even a less pretext, depose to the fact of residence; some ignorantly believing that a legal residence has been created, but others wilfully perjuring themselves."—*J. M. Davenport, Esq., Dep. Reg. of the Diocese of Oxford.*

"It may be a question, whether the fee upon marriage licences might not with advantage be reduced. Marriages by licence do not increase as population increases."—*Lord Auckland, Bishop of Bath and Wells.*

"It has lately been brought to my notice that the increase in the number of persons married by licence has not kept pace with the increase of the population, if it has not actually diminished. This has been attributed to the great expense of a licence, which deters many from obtaining one."—*The Bishop of Ely.*

"The lower classes shrink from the publicity of the publication of banns in their own parish, and as they cannot afford the expense of a marriage licence, they have recourse to the registry or to some neighbouring town church.

"I believe this practice, which is attended with many evils, might be very materially diminished if the Government stamp on marriage licences were reduced from 12s. 6d., to 2s. 6d., whilst the Treasury would not suffer, because the number of licences issued would so largely increase. But accompanying such a change, every incumbent ought to be made a surrogate for issuing licences for his own parishioners, and the fee for such licence fixed, and of small amount."—*The Bishop of Durham.*

"The full inquiries made when a licence is applied for, and one of the contracting parties having to appear personally and be sworn to the truth of the facts as to age, residence, consent, &c., as specified in the affidavit, previous to the grant of a licence, afford a much greater protection against clandestine or fraudulent marriages, and it seems worthy of consideration whether it would not be desirable to exempt the affidavit and licence from the present stamp duties (amounting together to 12s. 6d.), or at least to reduce the same, so as to make them more easy of attainment to all classes."—*J. Shephard, Esq., Registrar of the Diocese of London.*

*Surrogates.*—"Under existing circumstances the paucity of such officers is an evil; and it is considered that their offices for business should be made more public. In country places they are not generally known. If the office is continued in

its present form the price of a licence should be greatly reduced. The Government stamp duty, which is *pro tanto* an impediment to honest matrimony, should be done away. The surrogate should hold licences in his house, and not have to send to London or to the cathedral town for them, as is now done, to the great inconvenience of parties waiting to be married. There should also be a deputy surrogate, whose services would be available in the absence of his chief."—*The Bishop of Rochester.*

Licences

#### 4. MISCELLANEOUS OBSERVATIONS AND SUGGESTIONS.

*Marriage should be treated by the State as a civil contract.]*  
 "I have no hesitation in saying that I think it will be conducive to the cause of true religion and virtue if it shall be decided that marriage shall henceforth be treated by the State as a civil contract, to be entered into in the presence of functionaries appointed by the Government.

Various suggestions for the amendment of the law marriage

"In saying this, I speak as one who regards the contract as a religious contract also; and I should call upon all over whom my influence might extend to regard it in this point of view, to make their vows in the presence of God, and to seek the benediction of God's minister. This would be the view taken by all who defer to the formularies of the Church of England. But on that very account—on account of my reverence for an ordinance of the Church,—I would guard it from profanation. If the law of the land shall require of all who enter into the state of matrimony that they shall have recourse to the legal forms necessary for the formation of the civil contract; and if the observance of these forms shall be all that is requisite to constitute a valid marriage, then the Church will be able to save one of her ordinances from a degradation to which it has long been subjected, and she may confine the administration of the ordinance to those who approach it with a religious intent, and with that spiritual preparation which is required to render efficacious any rite or ceremony of our holy religion. . . . It is believed that any couple may demand of the clergyman of the parish to be married according to the forms of the Church, on their having been out-asked by banns or on their presenting a licence. To the church, therefore, parties sometimes repair, not impelled by a holy sentiment, but simply for the sake of convenience. The clergyman, in consequence, is not unfrequently placed, from the misconduct of the parties, under circumstances of considerable difficulty, requiring a union of firmness with courtesy and discretion, not always to be found in young men, to whom the administration of the office of matrimony is, in large parishes, generally delegated.

"On the highest grounds, therefore, I should be glad to see

Various  
suggestions.

the law of marriage still further altered, so as to require the civil contract to be entered into by all parties; leaving it to each party to decide whether they will or will not seek the benediction of the Church."—*Very Rev. Dr. Hook, Dean of Chichester.*

"I would beg to draw the attention of the commissioners to . . . a certain doubtfulness in relation to the marriages of persons one of whom may be resident in Scotland, under publication of banns. Although in common sense the publication of banns in Scotland ought to be received in England, yet the obligation to receive it is not duly ascertained; and I therefore submit that in any Act of the legislature regulating marriages, a declaratory clause should be inserted so directing, from whatever religious body it may come."—*Chancellor of the Diocese of Carlisle.*

*As to residence for licence.*] "As parties are frequently subjected to inconvenience by the length of residence required by the Act, previous to the affidavit being made, it would be for the commissioners to consider whether seven or ten days' residence would not be sufficient."—*J. Shephard, Esq., Registrar of the Diocese of London.*

*Witnesses.*] "Require two friends of party to be married, to appear at the time and place of marriage as witnesses, and to give their addresses; and require such witnesses to be in addition to and independent of the officers who belong to or attend the church or chapel on account of the service therein performed."—*The Bishop of Rochester.*

*Consent to the marriage of minors.*] "I would further suggest the amendment of the 17th section of 4 Geo. 4, c. 76, by authorizing the mother to give consent in cases where the father of the minor is *non compos*, in lieu of subjecting parties to the expense and delay of applying to a Court of Equity."—*J. Shephard, Esq., Registrar of the Diocese of London.*

"Section 8 of the 4 Geo. 4, c. 76, only avoids banns where they are forbidden by parents or guardians in the case of minors; ought not cases of non-residence, insanity, &c., to be provided for? I once heard a woman forbid a man's banns, alleging that he was her husband."—*C. S. Greaves, Esq., Q.C.*

*Previous residence for banns.*] "A doubt has been raised on the 4 Geo. 4, c. 76, s. 2, as to whether any, and, if so, what residence is necessary before the first publication of banns. It seems to me that if the person has commenced a residence in the parish by sleeping (*pernoctando*) on a Saturday night, he has a right to have his banns published on the Sunday morning, unless the clergyman require the seven days' notice under s. 7. But the 6 & 7 Will. 4, c. 85, s. 4, requires a notice to be given 'to the superintendent registrar of the district within which the parties shall have dwelt for

not less than seven days then next preceding,' and the notice must contain such a statement. And the 19 & 20 Vict. 9. 119, s. 2, requires a solemn declaration of such residence, and renders any person wilfully making any false declaration or giving any false notice liable to the penalties of perjury. It seems to me that the law of banns ought to be put on the same footing as to the seven days' previous residence, and under the like penalties, as both would tend to prevent the evasion of the 4 Geo. 4. c. 76."—*C. S. Greaves, Esq., Q. C.*

Various  
suggestion.

*Marriages of residents in parochial districts.*] "Many parochial districts have been formed, and are in the course of formation, under the authority of the bishops and the Ecclesiastical Commissioners, with power for the solemnizing of marriages in their respective churches. It has been made a question whether the persons comprehended within the new districts still retain their right of marriage in the old. As those new districts are created parishes for all ecclesiastical purposes, I consider that right to be abrogated. I am, in my position, constantly feeling the inconvenience. It is the wish, a natural one, of many to continue that right, and they cannot be persuaded that it is lost. A declaratory clause in this respect also is advisable. I would observe, as bearing on this subject, that a better publicity should be given previously to the formation of districts, and that the boundaries should be carefully made known."—*The Chancellor of the Diocese of Carlisle.*

"I would propose to give parties the option of marrying either in the church of the mother parish or in the church or the parish or district constituted under the Church Building Acts within which they or one of them resides, as they might desire."—*J. Shephard, Esq., Registrar of the Diocese of London.*

*Fees.*] "It would be very desirable that the commissioners should recommend some uniform scale of fees for the performance of all offices relating to marriage; receiving declarations of intention; publishing banns; administering oaths or declarations; granting licences; performing ceremony by clergyman (or in the case of registrars, doing what is in law equivalent thereto), &c. There is a considerable difference between the practices and customs of different parishes, even in the same neighbourhood, as to this, and a good deal of dissatisfaction naturally arises therefrom. The clergy generally would be very glad of a statutory regulation in the matter. And the rule ought to be the same for clergy and for registrars. There should be no *pecuniary* reason for preferring one place, or one mode of celebrating marriage to another. It must be supposed that people who can afford it will make presents on such occasions; and it is quite right that they should do so if they please; but the

Various  
suggestions.

demandable fee should be of ascertained amount."—*Ven. J. Randall, Archdeacon of Berks.*

"Fees in the Church should, by some means, be brought to an equality in all parishes, and with those under the non-religious process. Allowance for the *existing interests of surrogates*, and of clergy in large parishes, should be provided. Payments for banns and marriages are a material portion of the clergyman's income in some places. A proper lay officer to issue licences and banns as authority for marriages should be appointed for districts; his certificate should be obligatory on the clergy as authority to marry unless they claim delay of \_\_\_\_\_ days for the purpose of showing legal cause before a magistrate for refusing to ratify the union. Stamp duty to Government being done away, the fee for licence and for banns should only constitute a fair average remuneration for the work which is done."—*The Bishop of Rochester.*

"Q. 98. Does your lordship think that marriages of an improper description are frequent?—Far from infrequent. In my diocese we have instances every year, such as an uncle marrying his niece, a widower marrying the sister of his late wife, and the like, through the present facility of escaping notice.

"Q. 99. The publication of banns is hardly a check on marriages of this description, especially in populous places?—It is scarcely any at all.

"Q. 100. Of course all these marriages of which your lordship speaks would be void marriages?—They are void; but still the evil exists, and a great evil it is. Another great evil is the present extreme difficulty of punishing the parties who take a false oath. It is nobody's business to prosecute; and moreover I need not tell your lordships that you cannot indict the parties taking a false oath for perjury. You can proceed against him for the misdemeanor, but it is nobody's business to do so. The consequence is, that false oaths are taken with perfect impunity. You cannot expect the chancellor of the diocese who issues the licence to prosecute in these cases, when there is no duty laid upon him to do so."—*The Bishop of Oxford (now Bishop of Winchester).*

IV.

STATISTICS OF MARRIAGES.

STATISTICS OF MARRIAGES IN ENGLAND.

Table 1.—Marriages solemnized by the Established Church in each year from 1841 to 1871 :

YEARS.	Special Licence.	Licence.	Banns.	Superin- tendent Registrar's Certificate.	Not stated.	Total by Established Church.
1841	13	15,792	78,015	972	19,579	114,371
1842	9	14,935	75,744	944	18,415	110,047
1843	8	14,544	79,849	1222	18,014	113,637
1844	10	14,930	85,176	1558	18,335	120,009
1845	10	16,013	92,867	1706	18,919	128,515
1846	14	17,135	92,995	1862	18,503	130,509
1847	14	17,052	84,863	1968	16,979	129,876
1848	13	16,896	86,519	2170	15,871	121,469
1849	18	16,697	90,644	2593	13,230	123,182
1850	8	17,413	98,669	3136	11,733	130,959
1851	8	17,781	99,406	3351	10,412	130,958
1852	8	19,461	106,497	3610	4,306	133,882
1853	8	20,424	109,166	3814	4,430	138,042
1854	15	21,048	105,050	3811	4,185	134,109
1855	14	20,386	99,546	3804	4,001	127,751
1856	9	21,336	104,280	4045	3,949	133,619
1857	9	21,250	102,062	3748	3,962	131,031
1858	15	19,858	100,432	3787	3,990	128,082
1859	19	20,345	107,737	4204	3,905	136,210
1860	14	20,742	108,685	4243	3,686	137,370
1861	16	20,090	102,955	4048	3,588	130,697
1862	18	19,486	102,870	3966	3,393	129,733
1863	19	19,298	109,572	4312	3,542	136,743
1864	12	19,874	113,564	4257	3,376	141,083
1865	23	20,722	116,745	4070	3,444	145,104
1866	17	20,297	118,274	4281	3,171	146,040
1867	17	19,395	112,533	3981	3,004	138,930
1868	26	18,186	110,824	4125	2,877	136,038
1869	19	17,384	110,964	3993	2,722	135,082
1870	14	17,005	115,089	4008	1,870	137,996
1871	14	16,960	121,962	4196	1,581	144,668

Of the total number of marriages in England and Wales in 1871 (190,112), those by the Established Church were 76 per cent.



## MARRIAGES IN ENGLAND.

Table 2.—Marriages not according to the rites of the Established Church, 1841 to 1871 :

YEARS.	In Registered Places.		In District Register Offices.	By Quakers' usages.	By Jewish usages.	Total not in Established Church.
	Roman Catholics.	Other Christian Denominations.				
1841	5882		2064	66	113	8,125
1842	6200		2357	58	163	8,778
1843	7152		2817	61	151	10,181
1844	2280	6284	3446	55	175	12,240
1845	2816	7181	3977	74	180	14,228
1846	8027	7669	4167	68	224	15,155
1847	2961	7483	4258	83	184	14,969
1848	3658	8060	4790	67	186	16,761
1849	4199	8662	5558	58	229	18,701
1850	5623	9626	6207	69	260	21,785
1851	6570	9540	6813	65	260	23,248
1852	7479	10,017	7100	57	247	24,900
1853	8375	10,149	7598	68	288	26,478
1854	7813	9,573	7393	52	287	25,618
1855	7344	9,296	7441	57	224	24,362
1856	7527	9,710	8097	72	312	25,718
1857	7360	10,686	9642	67	311	28,066
1858	6643	11,094	9952	79	220	27,988
1859	7756	12,519	10,844	70	324	31,513
1860	7800	13,342	11,257	75	312	32,786
1861	7782	13,182	11,725	58	262	33,009
1862	7345	13,870	12,723	59	300	34,297
1863	8095	14,714	13,589	51	318	36,767
1864	8659	15,627	14,611	58	349	39,304
1865	8742	16,429	14,792	54	353	40,370
1866	8911	17,215	15,246	63	301	41,736
1867	7918	16,865	15,058	68	315	40,224
1868	7517	17,150	15,878	73	306	40,924
1869	7281	17,526	16,745	50	336	41,888
1870	7391	18,024	17,848	48	358	43,669
1871	7647	18,975	18,378	53	397	45,449

Of 100 marriages in 1871 not by the Established Church, 17 were in Roman Catholic places of worship, 42 in the chapels of various denominations of Nonconformists, 1

according to the usages of the Quakers, '9 according to those of the Jews, and 40 were celebrated at the district register offices. Of these civil celebrations it is not known how many are followed by a religious service under section 14 of 19 & 20 Vict. c. 119. In the case of mixed marriages between Roman Catholics and Protestants some couples are married twice and are counted twice in the registers.

Statistics of marriages in England.

#### STATISTICAL NOTES RELATING TO MARRIAGES.

*Quarterly marriages.*—The largest number of marriages takes place in the three months ending the last day of December; the next largest in the quarter ending 30th June; the next in the September quarter; and the fewest in the March quarter. In the years 1838 to 1870 the mean rates to 100,000 persons living were as follows: December quarter 976 marriages, June quarter 838, September quarter 790, March quarter 686.

*Marriages of minors.*—The number of men married in 1870 under twenty-one years of age was 13,598, and of women 39,205, the respective proportions to the total numbers married being 7.5 and 21.6 per cent. A slight increase in the proportional number of minors married is noted. These early marriages continue to prevail to the greatest extent in the same parts of the country as in former years; the counties of Bedford, Leicester, Northampton, Bucks, Notts, and Stafford, showing the largest proportion of men, and Durham, Stafford, the West Riding of York, Huntingdon, Leicester, Northampton, Notts, Bucks, and Bedford the largest proportion of women who married under twenty-one years of age.

*Signature of marriage registers.*—Of the men who were married in the year 1870, 35,999, or 19.8 per cent., and of the women 49,532, or 27.3 per cent., signed the register by mark. The improvement in the state of elementary education, of which an increase in the proportion of those able to write their names is an indication, continues at a very slow rate, and some years must yet elapse before the effects of recent legislation on the subject are seen in the registers.

*Places of worship registered for marriages.*—On 1st January, 1872, the number of buildings registered for the solemnization of marriages in England and Wales was 6644. Of these 437 were in the metropolis, 946 in Lancashire and Cheshire, and 1040 in Wales and Monmouthshire. The Roman Catholics had 697 churches and chapels registered, the Independents 1860, the Baptists 1315, the various denominations of Wesleyan Methodists 1732, and the Welsh Calvinistic Methodists 316.

## V.

## MARRIAGES IN DISSENTERS' CHAPELS.

CIRCULAR FROM THE CONGREGATIONAL UNION AS TO CON-  
SENT TO MARRIAGES IN THE CHAPELS OF THEIR DENO-  
MINATION.

As to con-  
sent to  
marriages  
in certain  
chapels.

There is some reason to believe, that several Dissenting ministers have been led to imagine that it might be desirable for them to be appointed registrars of marriages in their own places of worship; overlooking the fact, that they would thereby become stipendiaries of the State, and, while sharing the emoluments, be liable to all the responsibilities of servants of the Government. . . . I hope we shall all jealously retain the liberty which the law has granted us.

G. SMITH, Secretary.

Congregational Library, Oct. 3, 1856.

The Committee of the Congregational Union, some years since, originated measures, which they submitted to the Dissenting deputies, with a view to effect such alterations in the law of marriage as would place the marriages of Dissenters in all respects on an equality with those celebrated in the Church of England. This object has been happily secured by the passing of an Act, during the last session, "to Amend the Provisions of the Marriage and Registration Acts." It will come into operation on the 1st day of January next, and will remove the objections properly felt to many provisions of the existing law.

Having had their attention directed, by several pastors and others, to a circular issued by command of the Registrar General to the officiating ministers of all places of worship registered for the solemnization of marriages, and to a series of questions in relation to the new Marriage Act, to which they are requested to return early replies, the committee have remitted the full consideration of the subject to a sub-committee; and, as the result of their deliberations, publish a draft of what they imagine will be the proper kind of answers for the pastors of Congregational churches to return to the questions submitted to them by the Registrar General. It is not supposed that these replies will be largely adopted in

## *Use of Chapels for Marriages.*

4

the words employed by the committee; but they may be useful as furnishing suggestions in relation to the sort of reply which it may be well to make.

As to consent to marriage in certain chapels.

### QUESTIONS AND PROPOSED ANSWERS.

Q. Will the above-mentioned registered building be accessible and free to all persons indiscriminately who shall have obtained from the superintendent registrar of the district the requisite authority for the solemnization of their marriage therein?

A. Not indiscriminately; section 11 of the Act requiring consent in each case.

Or,

Q. Will the use of such building be accorded only to a particular class of persons, and, if so, what class or description of persons will be allowed the privilege of marrying therein?

A. The use of this building will not be confined to any particular class of persons, but as a general rule will be open to all.

Q. Will it be made a condition of marriage in such registered building that the same shall be solemnized by the minister of the place, or (with his consent) by some other minister as his substitute?

A. It certainly will?

Or,

Q. If the parties should not be desirous of having a religious service, will they be allowed to marry in the building in the absence of a minister?

A. Certainly not. The registrar's office being available in such cases.

Q. Will the payment of any, and, if so, of what, fee be in future demanded by or on behalf of the minister of the chapel on the solemnization of a marriage therein, either by licence or without licence; or will the payment of a fee be left optional with the parties, as hitherto?

A. To be left optional, or by arrangement with the minister.

Q. Will any, and, if so, what, fee be demanded for the use of the chapel on the same occasion?

A. None.

Q. Will you favour the Registrar General with the names and addresses of the several trustees, owners, deacons, or managers of the above-named registered building, in order that persons proposing to marry therein may know to whom to apply for the requisite consent? If so, be pleased to write those particulars in the space allotted for that purpose on the other side of this paper.

As to consent to marriages in certain chapels.

A. The application can in every case be made to me, as the minister ; but, if the pulpit should become vacant by death or otherwise, application can be made to one of the deacons, whose name in that case should be communicated to the Registrar General.

Q. Is it, in your opinion, desirable or expedient that ministers of registered places of worship should be appointed to act as registrars of the marriages solemnized therein ?

A. In my judgment, it is highly inexpedient, as a general rule, for a minister to accept such an appointment, and the more so as it appears to involve the liability to act as registrar in other chapels in the district, and in the district registrar's office, if required.

Q. Have you, personally, any wish to act in that capacity ?

A. None.

It may be well to add, these answers are not to be regarded as binding on my successors in office.

VI.

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JEWISH MARRIAGES.

NOTICE RESPECTING MARRIAGES OF PERSONS OF THE  
JEWISH RELIGION POSTED UP AT EVERY SYNAGOGUE (a).

At the request of the London committee of deputies of the British Jews, and by the direction of the Chief Rabbi, the wardens of this synagogue GIVE NOTICE that marriages between persons professing the Jewish religion are, by the laws of the land, absolutely null and void, unless they take place agreeably to the provisions contained in the several Acts of Parliament having reference thereto.

Jewish marriage and divorce.

Any person omitting to register a marriage solemnized by him, is for every such offence subject to a penalty of fifty pounds.

It is also enacted, that any person knowingly and wilfully making any false declaration, or signing any false notice or certificate, shall suffer the penalties of PERJURY.

And that any person wrongfully and wilfully unduly solemnizing marriages is guilty of FELONY.

Thus, besides the illegality of marriages not solemnized according to law, the persons concerned therein are not only liable to heavy pecuniary fines, but they also subject themselves to prosecution for perjury and felony, and so great is the evil that must result to individuals, to families, and indeed to the whole community, from such practices, that the constituted authorities will not fail to put the law in motion against all parties guilty of these offences.

It is hoped that this notice will have its due effect, the more so as there is really no excuse for persons to act in contravention of the law, the secretary of the synagogue being enabled to give all necessary information.

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(a) Communicated by Lewis Emanuel, Esq., Solicitor and Secretary of the London Committee of Deputies of the British Jews.

Jewish marriage and divorce.

MARRIAGES AND DIVORCE ACCORDING TO THE JEWISH RELIGION (a).

In accordance with the law of Gen. i. 28, a Jewish marriage constitutes a religious and not a civil contract. It is effected in a very simple manner. The bridegroom places a silver coin in the hand of the bride, or puts a ring on her finger, accompanied by the words, in the presence of two Jewish witnesses, "Thou art wedded unto me according to the law of Moses and Israel, ye are witnesses."

Jewish divorce.

A Jewish divorce is a process by which the religious contract is dissolved. The form is as simple as that of marriage; namely, the husband, in the presence of two Jewish male witnesses, addresses his wife in these words: "Thou art henceforth divorced from me according to the law of Moses and Israel, ye are witnesses." Each of the parties thus divorced is free to marry again, but the wife is not to be remarried to one of the tribe of Aaron the priest. In order, however, to restrict the above practice, which might too often bring misfortune into Jewish families, inasmuch as the husband, in a moment of passion, might dismiss his wife for the least cause, the rabbis of old introduced a certain document in the Syriac language to be delivered by the husband to his wife either personally or by a messenger in the presence of not less than ten people, including the rabbi and his ecclesiastics, in lieu of the verbal formula described above.

According to the Mosaic law no particular cause is required to entitle the husband to divorce his wife. If he be displeased and finds himself unhappy with his wife, he is at liberty to divorce her; neither adultery, desertion, nor cruelty is necessary as an excuse for the husband (*vide* Deut. ch. xxiv. 1—4).

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(a) Communicated by the late Mr. Herschel Filipowski.

VII.

QUAKERS' MARRIAGE REGULATIONS.

EXTRACTS FROM THE MARRIAGE REGULATIONS OF THE  
SOCIETY OF FRIENDS.

*Taking effect from 1st of First Month, 1873.*

Marriage being an ordinance of God, appointed for man's help and blessing, ought to be entered upon in the fear of the Lord, and with a reverent attention to His counsel and guidance. That love in which our Heavenly Father would unite those who rightly enter into this solemn engagement, is a love chastened and sanctified by love to Him, and fitted to endure the test of the multiplied trials and vicissitudes of life.

Marriage according to usages of the Society of Friends.

In relation to this hallowed covenant, let none be influenced by motives of worldly expediency. Let a due regard be paid to the judgment of parents or guardians; and let it never be forgotten how necessary to the harmony and happiness of such a relationship, is union in religious principle and fellowship. We would counsel all against needless expenditure and display on the day of marriage. In setting out in life, let there be a prudent and Christian care to avoid a scale of living which may minister to luxury or pride, or tend to an increase of worldly care, and thus diminish the power to devote time and money to the service of others, for the Lord's sake.

We think it right again to remind our members of the ancient testimony of our Society against marriages by a priest, as involving a recognition of the hierarchical system, and a virtual admission that the priest has a claim to represent either Christ or the Church—a claim from which we conscientiously and entirely dissent. At the same time we hold, as we have ever done, that marriage is God's ordinance, and not man's—not a mere civil contract, but a religious act; and, therefore, seeing that the legislature has fully confirmed us in our privilege of solemnizing marriage according to our long-established religious usages, we desire that none of our members be found departing therefrom.—1872.

This meeting having taken into consideration the Yearly



Marriage  
according to  
usages of  
the Society  
of Friends.

Meeting minute of 1675, against the marriage of first cousins, declares it to be its sense and judgment that no Monthly Meeting should pass first cousins in order for marriage; and it earnestly desires all friends, whenever they know or hear of any first cousins designing or intending to marry, that they immediately advise them against it.—1747—1801.

The modifying or rescinding of the rules which disallow the marriage of first cousins amongst us, has been at this time deliberately considered, and this meeting does not deem it right to make any alteration in the said rules.—1833.

This meeting is of the judgment that as compliance with the laws of the land, in cases wherein conscience is not violated, is an acknowledged principle of Friends, the Society cannot, consistently with this principle, allow in our meetings the passing of marriages which are not authorized by the law on this subject, and which are included in the degrees of consanguinity or affinity prohibited thereby.—1811.

VI. Marriages are to be solemnized at a meeting for worship held at some seasonable hour in the forenoon; being either the usual week-day meeting, or a meeting duly appointed on some convenient week-day, and in the meeting-house which the woman usually attends, or in the neighbourhood of which she resides, unless leave be obtained of the liberating Monthly Meeting to solemnize the marriage in some other meeting-house, with the consent of Friends of such other meeting; but no marriage is to take place in a meeting-house in which a meeting for worship is not regularly held.

VII. After a seasonable time, the parties are to stand up, and, taking each other by the hand, to declare, in an audible and solemn manner, to the following effect. The man first, viz.:—*Friends, I take this my friend, C. D., to be my wife, promising, through Divine assistance, to be unto her a loving and faithful husband, until it shall please the Lord by death to separate us.* And then the woman in like manner:—*Friends, I take this my friend, A. B., to be my husband, promising, through Divine assistance, to be unto him a loving and faithful wife, until it shall please the Lord by death to separate us.*

VIII. A certificate, to the following effect, is then to be signed by the parties: the man first; the woman next, with her maiden or widow name; and after it has been signed by a few of those present as witnesses, it is to be audibly read by some proper person: and such other persons, present at the marriage, as think proper, may sign *after the conclusion of the meeting.*

A. B., of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_ son of D. B., of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, and of E. his wife, and C. D., daughter of E. D., of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, and of F. his wife, having duly made known their intention of taking each other in marriage, and public notice of their said intention

having been given, and the needful consent of parents [or guardians, as the case may be] having been signified, the proceedings of the said A. B. and C. D. were allowed by the Monthly Meeting of the religious Society of Friends held at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_. Now these are to certify, that, for the solemnization of their said marriage this day of the \_\_\_\_\_ month, in the year one thousand eight hundred and \_\_\_\_\_, they, the said A. B. and C. D., appeared at a public meeting for worship of the aforesaid Society, in their meeting-house, in [or at, as the case may be] and the said A. B. taking the said C. D. by the hand declared as followeth [see above]: and the said C. D. did then and there, in the said assembly, declare as followeth [see above]: and the said A. B. and C. D. as a further confirmation thereof, and in testimony thereunto, did then and there to these presents set their hands.

Marriage according to usages of the Society of Friends.

A. B.  
C. D.

*We, having been present at the above said marriage, have also subscribed our names as witnesses thereunto, the day and year above written.*

WHEN EITHER OR BOTH OF THE PARTIES IS OR ARE NOT IN MEMBERSHIP.

The legislature having (by the Acts 23 & 24 Vict. c. 18, and 35 Vict. c. 10) legalized marriage, according to our usages, between parties one or both of whom may not be in membership with the Society of Friends, the following regulations are to be observed in reference to such marriages:—

XII. In all cases of intended marriage, where one or both of the parties shall not be in membership, but shall desire to be married in accordance with our usages, such person, or each such person, shall in the first place sign a declaration, attested by two adult members of the Monthly Meeting within which he or she shall reside, in the form following, viz.:—

To \_\_\_\_\_ Monthly Meeting of Friends.  
*I hereby declare that I am desirous of being married according to the usages of the Society of Friends, and, if permission so to do be granted, I undertake to comply in all respects with the regulations of the Society in relation to marriage.*

Dated the \_\_\_\_\_ day of \_\_\_\_\_ month, 18 \_\_\_\_.

(Signed) \_\_\_\_\_ A. B.

*We, the undersigned, witnesses to the foregoing signature, are of opinion that permission to be married according to our usages may suitably be granted to A. B. by the Monthly Meeting.*

E. F., of \_\_\_\_\_

G. H., of \_\_\_\_\_

And such declaration, or each such declaration (as the case

Marriage  
according to  
usages of  
the Society  
of Friends.

may be), is then to be presented to the Monthly Meeting within the limits of which the party making the declaration resides; which Monthly Meeting may accept or refuse the application at its discretion; and if it accede thereto, shall direct its registering officer to issue a certificate (a) in the form or to the effect following, for the applicant to produce to the superintendent registrar when giving him the notice required by law.

*I hereby certify that A. B. is a person duly authorized, under the General Rules of the Society of Friends, to proceed to the accomplishment of marriage according to the usages of the said Society. As witness my hand this day of month, 18 .*

I. J.,

*Registering Officer of*

*Monthly Meeting.*

*Registration.*] In every Monthly Meeting a suitable friend is to be appointed to register all marriages that may be solemnized within the limits of such meeting. The importance of the duties of this office renders it necessary that it should be kept constantly filled by a person fully competent to act therein, according to the provisions of the law, and who may not be likely to be interrupted in the performance of his duties, by absence from home or other causes. On every fresh appointment of such friend (who, according to the Registration Act, 6 & 7 Will. 4, c. 86, is designated a registering officer of the Society of Friends), Monthly Meetings are to take care to report, without delay, by minute signed by the clerk, his name and address, to the recording clerk of the Society, No, 86, Houndsditch, London; who is required by the Act to certify the same in writing to the Registrar General in London.

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(a) The certificate is required by the provisions of the statute 35 Vict. c. 10.

## VIII.

### MARRIAGE REGULATIONS IN THE ARMY.

*Extract from the Queen's Regulations and Orders for the Army.*

423. COMMANDING officers of regiments, who have ample experience of the very great inconvenience arising to the service and to the public from the improvident marriage of soldiers, are to discountenance such connections, and to explain to the men that their comforts as soldiers are in a very small degree increased by their marriage, while the inconvenience and distress naturally accruing therefrom are serious and unavoidable, particularly when regiments are ordered to embark for foreign service.

Marriages of  
Soldiers.

424. Every soldier, previously to his marriage, should obtain the consent of his commanding officer, and state the name and condition of the woman he proposes to marry, and whether she be a spinster or a widow. In granting their consent, commanding officers should most carefully consider the claims of the soldier as regards good conduct and length of service; and when deserving soldiers cannot be admitted on the strength of their corps as married men, their applications should be registered with a view to their wives being taken on the strength as vacancies occur (b).

### MARRIAGES ON BOARD HER MAJESTY'S SHIPS.

*Extract from the Queen's Regulations and Admiralty Instructions.*

21. WITH the view of obtaining and preserving an authentic record of marriages solemnized on board her Majesty's ships, the captain is, when marriages are solemnized on board the ship he commands out of the United Kingdom, to cause a declaration of the marriage, signed by a minister of the church, by the contracting parties, and by two competent witnesses, to be

(b) There is no corresponding regulation in the royal navy requiring seamen to obtain the consent of any officer previous to marriage.

Marriages  
on board  
H. M. ships.

entered in the log-book of the ship, specifying the fact, the day on which the marriage was solemnized, and the place where the ship then was. And he is to transmit to the Admiralty a certified copy of such declaration, which will be forwarded to the registrar of the Consistory Court of the Lord Bishop of London, in Doctors' Commons, for the purpose of being registered.

A fee of 1*l.* being required by the officer of the Bishop of London's Court for registering such marriages, that sum is to be received from the parties by the captain, who is to deliver the same to the paymaster, directing that officer to debit himself therewith in his cash account. The paymaster's receipt for the amount of the fee is to be transmitted by the captain, with the certificate before mentioned. (The form of certificate is prescribed in the addenda to "Queen's Regulations," &c., 1868.

## IX.

### MARRIAGE OF PERSONS USING THE WELSH TONGUE.

#### AUTHORIZED DECLARATION AND FORM OF CONTRACTING WORDS, PURSUANT TO 1 VICT. C. 22.

##### *Translation of the solemn Declaration.*

Welsh form  
of words.

Yr wyf fi yn ddifrifol yn hysbysu, na wn i am un rhwystr cyfreithlawn fel nad ellir fy nghysylltu, i, A. B., mewn priodas a C. D.

##### *Translation of the Contracting Words.*

Yr wyf fi yn galw ar y bobl sydd yma yn bresennol i dystiolaethu fy mod i, A. B., yn dy gymmeryd di, C. D. yn Wraig briod gyfreithlawn (neu yn Wr priod cyfreithlawn) i mi.

X.

MARRIAGES OF BRITISH SUBJECTS ABROAD.

CIRCULARS ISSUED TO HER MAJESTY'S CONSULS IN RELATION  
TO THE MARRIAGES OF BRITISH SUBJECTS.

*By whom Marriages may be solemnized, and where.*

Foreign Office,  
August 20, 1853.

Her Majesty's Government having been informed that, since the passing of the "Marriages in Foreign Countries Facilitating Act" (12 & 13 Vict. c. 68), doubts have in some instances arisen as to the person by whom, and the place where, marriages rendered valid by that Act are to be solemnized, I have to inform you that, in pursuance of the Act in question, British consuls general, consuls—or any person duly authorized to act in the absence of such consul,—vice-consuls, and consular agents may, subject to the rules therein laid down, solemnize such marriages, *provided they shall have previously received a warrant from the Secretary of State specially authorizing them to solemnize and register marriages, or to allow marriages to be performed in their presence.* No other persons whatsoever are qualified by the Act to solemnize marriages, or to allow them to be solemnized by any other person in their presence.

Circular on  
the Consul  
Marriage  
Act.

Any form of ceremony, according to the creed of the contracting parties, may be used; and the religious portion of the ceremony may be performed by a clergyman of any denomination; but the presence of the duly authorized consular officer is necessary to render such marriage valid; and if the ceremonial be not that of the Church of England and Ireland, which can only be duly performed by an ordained clergyman of that church, the contracting parties are to make a declaration before the consul, in words prescribed by the Act, that they know not of any lawful impediment why they may not be joined in matrimony, and that they call upon the persons present to witness that they take each other respectively to be lawful wedded husband and wife; and such declaration, in the absence of any religious ceremony, is sufficient.

The only place where marriages, under this Act, may be

Circulars to  
H. M.  
Cónsuls.

solemnized, is the "British consulate;" that is, the public office of the consul-general, consul, vice-consul, or consular agent, as the case may be; and every such marriage must be solemnized with open doors, between the hours of eight and twelve in the forenoon, in the presence of two or more witnesses.

Hence it follows that no marriages performed at other places, or under other circumstances, will be valid under this Act; and accordingly marriages cannot be solemnized under this Act in any churches or chapels, even though attached to British missions or connected with British consulates abroad, nor can they be solemnized under this Act by an ambassador, minister, or other diplomatic agent of the Crown.

I transmit to you for your information a copy of the Acts of Parliament in question. You will, however, therein perceive that the Act 4 Geo. 4, c. 91, also herewith enclosed, remains still in force, and legalizes marriages solemnized by a minister of the Church of England in the chapel, or house, of any British ambassador or minister residing within the country to the court of which he is accredited.

I may add that all marriages duly solemnized according to the local law in force, so as to be valid by that law in the country where they are solemnized, will be valid in England.

I am, &c.

*Marriages void in England derive no validity from being solemnized in British Consulates or Embassies.*

"Foreign Office,

"July 1, 1857.

"In consequence of some information which has been communicated to this office, I think it right, after consulting the law officers of the Crown, to make known generally to Her Majesty's diplomatic and consular servants abroad, that it was the intent and object of the Act 12th & 13th Vict. c. 68, no less than the Act of the 4th George 4, c. 91, to authorize the solemnization, in Her Majesty's missions or consulates abroad, of such marriages only as might lawfully be contracted and solemnized within Her Majesty's dominions. Marriages of British subjects domiciled in foreign countries, which are solemnized according to the '*lex loci*,' are not affected by these Acts. But it being the law of Great Britain and Ireland that marriage with a deceased wife's sister is void, such a marriage would derive no validity from the circumstance of its being solemnized in a foreign country under the 4th Geo. 4, c. 91, or 12th & 13th Vict. c. 68, although the law of such country may not prohibit such marriages.

"I have accordingly to instruct you in all cases where parties present themselves to be married at your consulate

not only to assure yourself, as far as possible, that there is no legal impediment, according to English law, to the marriage of such parties, but also to warn all parties indiscriminately that a marriage which would not be valid if solemnized in England, would be equally invalid if solemnized at a British mission or consulate, notwithstanding the '*lex loci*' prevailing generally with regard to marriage in the country where the minister or consul resides.

Circulars to  
H. M.  
Consuls.

"I am, &c."

*Marriages under the Civil Code in Italy.*

"Foreign Office,

"September 26, 1866.

"SIR,

"A question having been raised as to the competency of Her Majesty's consuls to grant the certificate required by the 103rd article of the new Civil Code, with reference to the marriage of a foreigner in the Italian dominions, and as to the formalities which should be gone through before the issue of such certificate, I am directed by Lord Stanley to instruct you, in the event of any application being made to you for a certificate of the nature above referred to, to call upon the parties to go through the form required by the 6th section of the '*Marriages in Foreign Countries Facilitating Act*' (12 & 13 Vict. cap. 68); and, upon their making the solemn affirmation or declaration thereby required, there will be no objection to your issuing a certificate in the following terms, which Lord Stanley has ascertained will be accepted as sufficient by the Italian authorities:—

"A. B. and C. D. having gone through the formalities required by the law of Great Britain, for enabling them to be married at Her Majesty's consulate, I,

, Her Britannic Majesty's consul at

, upon the evidence laid before me, hereby certify that according to the laws of Great Britain there is no obstacle to the celebration of their marriage.

"I am, &c.,"

"Her Majesty's Consul."

*Parties to be informed that Marriages at Consulates are not necessarily valid out of H.M. dominions.—Any party not a British subject must comply with local marriage law.*

"Foreign Office,

"Nov. 23rd, 1872.

"SIR,—

"I am directed by Earl Granville to inform you that the circular from this office of the 18th March relating to mixed marriages, under the Act 12 & 13 Vict. c. 68, is hereby rescinded and cancelled.



Circular to  
H. M.  
Consuls.

"You will perceive, on reference to the Act, that marriages under it are legal when both parties are British subjects; and also when only one of them is British; but in every case of such a marriage being celebrated before you, you will not fail to inform the parties that the marriage is not necessarily valid out of Her Majesty's dominions, and that they must make themselves acquainted with, and conform to, the requirements of the law of any country, not in those dominions, in which it may be of importance to them that their marriage should be legally recognized as valid. This being a matter of considerable importance, I am to impress upon you the necessity of never on any account omitting this warning.

"In the case of a mixed marriage, when one of the parties is a subject of the country in which the marriage is proposed to take place, it must be clearly understood that the party who is not a British subject must, previously to being married at the consulate, have complied with the requirements of the marriage law of such country, as far as it may be possible to do so, it being obviously contrary to comity to permit the celebration of such a marriage if these requirements are neglected when it is practicable to fulfil them.

"The circular of March 18 being withdrawn, the declaration appended to it will also, of course, be no longer required. Its object was to procure a record of the nationality of parties to a marriage; but this end will be answered by their nationality being inserted after their names in the notices of marriage, in the notice books and in the registers. You will accordingly always insist on this being done.

"I am, &c.,

(Signed) "ENFIELD."

# XI.

## MARRIAGES UNDER THE CODE NAPOLEON (a).

THE Code Napoleon requires that all marriages shall be entered into before the civil magistrate; and no minister of religion can officiate or interfere until a certificate has been presented to him certifying that the parties have contracted matrimony before the civil magistrate (usually the mayor or his deputy) at the Mayoralty, Hotel de Ville, or Maison Communale of the arrondissement.

Require-  
ments of the  
Code Napo-  
leon.

Persons, therefore, who live under the Code Napoleon must either continue single or be married by a purely civil ceremony of the shortest and simplest description.

That civil ceremony makes the marriage, in the eye of the law, to all intents and purposes complete.

Those concerned, however, are not required or expected to rest satisfied with it. On the contrary, every facility (not to say encouragement) is afforded for the subsequent interposition of the sacred office.

The certificate of the secular union is granted expressly *pour servir aux cérémonies religieuses*; and it issues without charge where the parties are in poverty.

If they are Roman Catholics (generally the case under the Code Napoleon), they, at the close of the civil ceremony, repair forthwith to church, where the priest, on receiving the indispensable certificate, unites spiritually at the altar those who have already been united civilly at the Hotel de Ville; thereby (in the words of the First Consul) "impressing the seal of religion on that union which has already received the seal of the law."

The priest is naturally soothed and gratified by the ready and pious obedience of his faithful disciples, who, under the force of religious obligation, seek from the holy ordinance that comforting assurance which befits the most solemn of

(a) The substance of a note communicated to the Marriage Laws Commissioners by the secretary of the commission, Mr. J. F. Macqueen, Q. C., who states that he had the benefit of despatches from the Secretary of State to Her Majesty's representatives at Paris and Brussels requesting their aid.

Marriage  
under the  
Code Napo-  
leon.

engagements. Other considerations too of a more worldly character may be supposed to operate on the French and Belgian mind, such as the credit and respectability which are retained or acquired by complying with the dictates of traditional decorum.

The average result is that, in at least ninety-five cases out of every one hundred in France, the parties who contract before the civil officer ask afterwards and receive the sacerdotal benediction. As to Belgium there is no return, but it is certain that the same deferential sentiment predominates in both countries. If there are some (certainly not many) who repose on the civil ceremony without renewing their vows in any place of worship, the effect is simply that the sacred ordinance is restricted to those who approach it reverentially.

Where any canonical impediment appears, the minister of religion withholds his rite. Three publications of banns usually precede the religious ceremony.

The antecedent public notification that a marriage between given parties is intended; the reception and the disposal of objections to the proposed union; the acceptance of the required consents from relatives; the administration of the civil rite whereby the marriage is completed; the formal recording of it in duplicate registers committed to the custody of distinct officials; finally, the preservation of the evidence which shall prove the marriage in the event of any subsequent challenge or inquiry;—all these are matters which the Code Napoleon places exclusively in the hands of civil functionaries, whose inquisitorial vigilance and circumspection are said to render clandestinity and deception next to an impossibility.

How these ends are attained the following propositions will indicate:—

Preliminary  
Require-  
ments.

1. Before the celebration of a marriage the civil officer shall make two distinct publications of it, and shall announce by placards, fixed and retained on the door of the town hall, the christian names, surnames, professions, and domiciles of the parties.
2. One of the publications shall be on a Sunday, and there shall be an interval of eight days between each.
3. The marriage shall not be celebrated till after the third day from the second publication.
4. The two publications shall be made in the municipalities of the places where the contracting parties shall have their respective domiciles.
5. If the contracting parties or either of them be under the authority of others, the publication shall be made in the municipalities of the domiciles of those others.

6. Evidence of the ages of the parties must be supplied to show how far they are under or free from authority. Preliminary requirements.
7. The son is absolutely incapable of marriage, even with the consent of parents, until he has attained the age of 18 years complete, and the daughter until she has attained the age of 15 years complete.
8. From these respective ages, until the son is 25 and the daughter 21, marriage may take place with consent, but not without.
9. From the respective ages of 25 and 21 the advice of father and mother, or of grandfather and grandmother, or of relatives must be asked. This obligation lasts through life, its object being to elicit objections from those most likely to know and advance them.
10. The advice asked need not be given, and if given need not be followed. The law is satisfied by what is called the "respectful act" of soliciting it.
11. After a short interval, if no response and no objection appear, the marriage may take place.
12. Acts of opposition shall be signed and communicated to the parties at their domicile.
13. The civil officer shall pause till all impediments and doubts disappear.
14. When the marriage has not been celebrated within a year, the publication shall be repeated.
15. The civil officer neglecting these precautions and formalities shall be punished by fine and imprisonment.

FORM OF THE CIVIL CEREMONY OF MARRIAGES AT THE  
HOTEL DE VILLE, OF THE TOWN OF ——. (*En séance publique.*)

The Mayor, seated in state and surrounded by officials, being attended by the parties seeking matrimony, their parents, relatives, and friends, proceeds to read and examine the documents which show that all the requisite preliminary notices and formalities have been duly carried out. He then addresses to the parties by way of admonition certain passages from the Code Civil, namely, these,—

Ceremony of marriage.

1. "Married persons owe to each other fidelity, succour, assistance;
2. "The husband owes protection to his wife, the wife obedience to her husband;
3. "The wife is obliged to live with her husband, and to follow him to every place where he may judge it convenient to reside; the husband is obliged to receive

Ceremony of  
marriage  
under the  
Code  
Napoleon.

her, and to furnish her with everything necessary for the wants of life according to his means and station."

These cardinal maxims being enunciated with emphasis, the effective scene in the formality next ensues, as follows:—

The Mayor (addressing the mother of the bridegroom). "Do you Madame Dufour consent to the marriage of M. Pierre Dufour your son with Mlle. Marie Talleux here present?"

Madame Dufour. "I do."

The Mayor (addressing the father of the bride). "Do you M. Talleux consent to the marriage of Mlle. Marie Talleux your daughter with M. Pierre Dufour here present?"

M. Talleux. "I do."

The Mayor (addressing the bridegroom). "Do you M. Pierre Dufour declare that you take for wife Mlle. Marie Talleux here present?"

M. Pierre Dufour. "I do."

The Mayor. "Do you Mlle. Marie Dufour declare that you take for husband M. Pierre Talleux here present?"

Mlle. Marie Dufour. "I do."

The Mayor. "In the name of the law, I declare that M. Pierre Dufour and Mlle. Marie Talleux are united by marriage."

This closes the ceremony, the parties on receipt of their certificate withdrawing from the mayor and resorting forthwith to the "minister of religion."

#### CERTIFICATE OF THE CIVIL CEREMONY OF MARRIAGE GRANTED TO AUTHORISE THE RELIGIOUS CEREMONY.

We, the undersigned Mayor of the Town of —, hereby certify that M. Pierre Dufour [*describing him*] has contracted marriage before us this day, in the Maison Communale, with la Demoiselle Marie Talleux [*describing her*]. This certificate, delivered the 2nd September, 1865, is to serve for the purpose of a religious ceremony, and is granted on unstamped paper by reason of poverty.

A. B., Mayor.

[It is stated that the precautions required by the Code Napoleon render incestuous marriages and cases of bigamy extremely rare. In France the number of condemnations for bigamy is said to be in general not more than five per annum. In England and Wales 69 persons were convicted of this crime in 1871. It is not conclusively shown, however, that the effect of the multiplicity of formalities in France is not to induce the parties to disregard all restrictions, and fall into concubinage.—J. T. H.]

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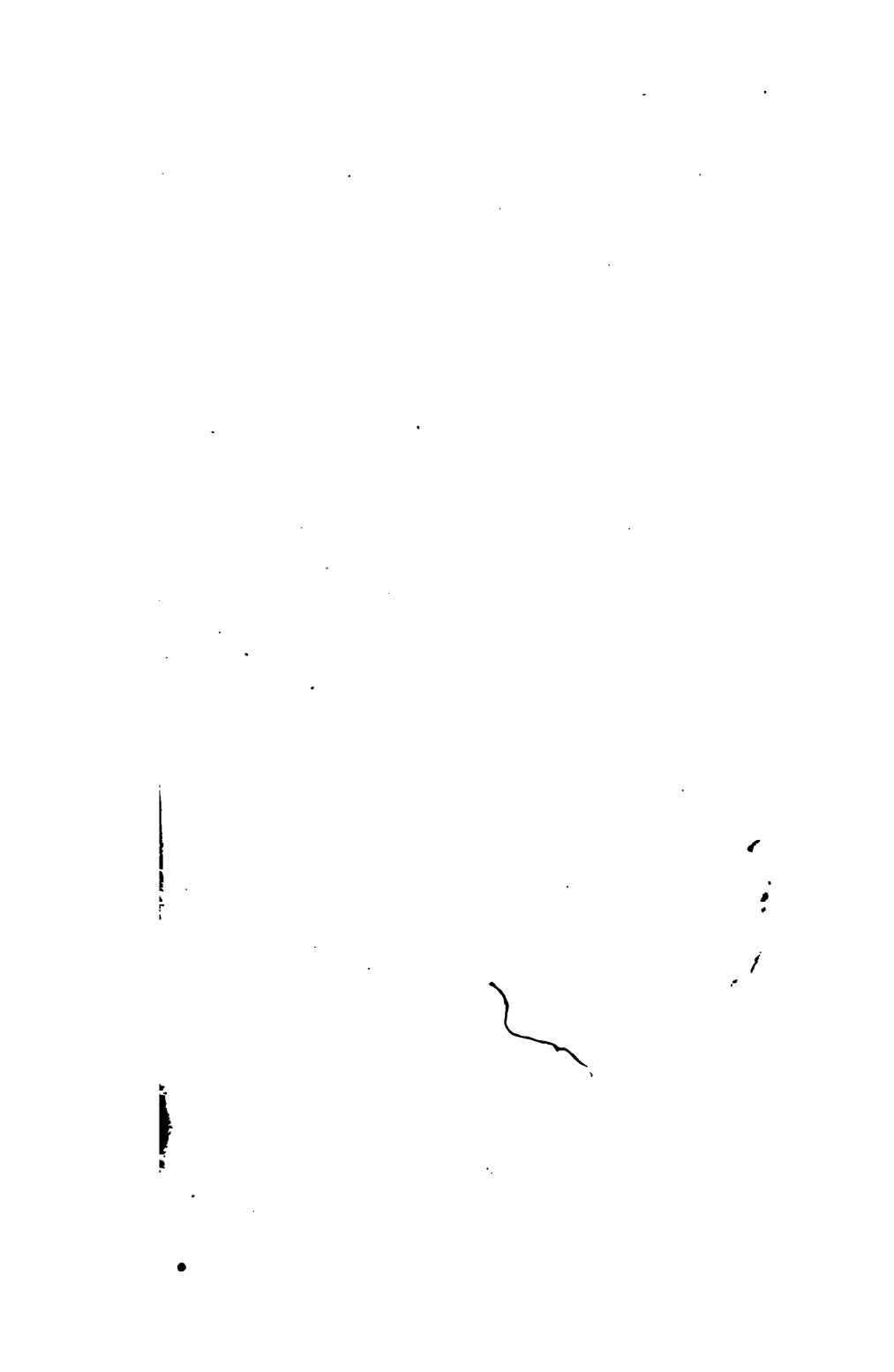
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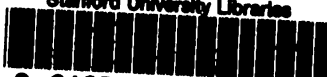
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